

# Legislative Analysis



## RAISE THE AGE

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4133 (H-1) as reported from committee**  
**Sponsor: Rep. Roger Hauck**

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

**House Bill 4134 (H-1) as reported from committee**  
**Sponsor: Rep. Douglas C. Wozniak**

**House Bill 4135 (H-1) as reported**  
**Sponsor: Rep. Julie Calley**

**House Bill 4142 (H-1) as reported**  
**Sponsor: Rep. Brian K. Elder**

**House Bill 4136 (H-1) as reported**  
**Sponsor: Rep. Ryan Berman**

**House Bill 4143 (H-1) as reported**  
**Sponsor: Rep. Leslie Love**

**House Bill 4137 (H-1) as reported**  
**Sponsor: Rep. Michael Webber**

**House Bill 4144 (H-1) as reported**  
**Sponsor: Rep. Tommy Brann**

**House Bill 4138 (H-1) as reported**  
**Sponsor: Rep. Daire Rendon**

**House Bill 4145 (H-1) as reported**  
**Sponsor: Rep. Graham Filler**

**House Bill 4139 (H-1) as reported**  
**Sponsor: Rep. David LaGrand**

**House Bill 4146 (H-1) as reported**  
**Sponsor: Rep. Mary Whiteford**

**House Bill 4140 (H-1) as reported**  
**Sponsor: Rep. Vanessa Guerra**

**House Bill 4443 (H-1) as reported**  
**Sponsor: Rep. Michele Hoitenga**

**House Bill 4141 (H-1) as reported**  
**Sponsor: Rep. Sheldon A. Neeley**

**House Bill 4452 (H-1) as reported**  
**Sponsor: Rep. LaTanya Garrett**

**Committee: Judiciary**  
**Complete to 4-24-19**

**BRIEF SUMMARY:** The bills, known as the “Raise the Age” (RTA) legislation, are intended to treat individuals who are 17 years of age as juveniles in criminal proceedings rather than automatically treating them as adults, provide a funding mechanism to provide juvenile justice services to those individuals 17 years of age adjudicated as juveniles, and create the Raise the Age Fund.

Each bill would take effect October 1, 2021, with the exception of House Bill 4146, which would take effect 90 days after enactment.

**FISCAL IMPACT:** The bills would have various fiscal implications for state and local government. See **Fiscal Information**, below, for a detailed discussion.

## ***THE APPARENT PROBLEM:***

Forty-six states and the District of Columbia automatically treat youths 17 and under who commit a crime as juveniles. Michigan is one of only four states that automatically try 17 year olds as adults, sentence them as adults, and send them to adult jails or prisons. Advocates for raising the age of who would be treated as an adult from 17 years of age to 18 point to research that overwhelmingly documents that adolescent brains do not fully develop until closer to 25 years old. Thus, a 17-year-old does not possess the judgment or impulse control of an adult. Seventeen-year-olds are also more likely to be victimized by older adults when incarcerated, and data show higher rates of depression, suicide, and recidivism when 17-year-olds are sent to adult jail or prison.

Data also show that juveniles respond well to rehabilitative programs and counseling. The juvenile justice system is built on the premise of identifying the needs of the juvenile and ordering services and programming to meet those needs. For some, services such as counseling, substance abuse treatment, and/or home detention may be enough. More violent youths may still require being tried as adults. But, some say, having the flexibility to send 17-year-olds to the juvenile justice system instead of automatically trying them as adults may get some young people the help they need to turn their lives around. A bipartisan package of legislation has been introduced to “raise the age” for automatic waiver to juvenile court to include 17-year-olds.

## ***THE CONTENT OF THE BILLS:***

### **House Bills 4133 to 4139 and 4142**

House Bills 4133 to 4139 and 4142 would amend existing provisions or add new sections to various acts to raise the age of who is considered to be a juvenile for purposes of adjudication or prosecution of criminal offenses, and the age that determines where a juvenile is to be detained, from children under 17 years of age to those under 18. (See **Brief Discussion**, below, for an overview of the juvenile justice system.)

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

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

- Change references to the collection of a juvenile’s “fingerprints” to “biometric data.”

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

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

MCL 330.2060a

**House Bill 4135** would amend the Code of Criminal Procedure. Currently, eligibility for placement under the Holmes Youthful Trainee Act (HYTA) is limited to an individual who committed a crime on or after his or her seventeenth birthday but before his or her twenty-fourth birthday. The bill would instead limit eligibility to an individual who committed a crime on or after his or her eighteenth birthday but before his or her twenty-fourth birthday.

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

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

MCL 762.11

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

MCL 722.822 and 722.828

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

MCL 780.983

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

MCL 803.302

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

The bill is tie-barred to House Bills 4133, 4134, 4137, 4142, and 4145. A tie-bar means that a bill cannot become law unless each bill to which it is tie-barred is also enacted into law.

MCL 764.15b

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

The bill would raise the age to *less than 18 years of age*, to apply the provisions to 17-year-olds.

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

The bill would eliminate this provision.

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

MCL 764.27

### **House Bills 4140, 4143, and 4145**

Generally speaking, House Bills 4140, 4143, and 4145 would amend various acts pertaining to confining juveniles in adult detention facilities or holding juveniles in the same area or vehicle as adults to apply current practices to those under 18 years of age. A detailed description of each bill follows.

**House Bill 4140** would amend the Juvenile Code within the Probate Code. Currently, in certain circumstances, juveniles under the age of 17 may be housed in a jail, prison, or other place of detention used to house adults as long as the juveniles are physically separated (out of sight and sound) from the adult offenders. The bill would revise numerous provisions within the Juvenile Code to apply current provisions pertaining to the detention or incarceration of juveniles with adults to those under the age of 18, as well.

Specifically, the bill would do all of the following (“court” means the Family Division of circuit court):

- Revise a provision allowing a child under 17 taken into custody for violating any law or ordinance, or a personal protection order (PPO), to be held, while awaiting the arrival of the child's parent or guardian, in any detention facility if completely isolated so as to prevent verbal, visual, or physical contact with any adult prisoner to apply also to a child under the age of 18.
- Allow a child at least 18 years of age (raised from 17) taken into custody for certain felony offenses to be detained in a cell or other secure area of a secure facility designed to incarcerate adults if the child is under the jurisdiction of the court under a supplemental petition for violating a PPO.
- Prohibit confining a juvenile under the age of 18 (raised from 17), who had been taken into custody or detained, in any police station, prison, jail, lock-up, or reformatory, or transporting the juvenile with, or compelling or permitting the juvenile to associate or mingle with, criminal or dissolute persons.
- Eliminate a provision allowing the court to commit a child at least 17 years of age to a county jail within the adult population for violating a PPO.
- Raise the age from under 17 years of age to under 18 in a provision that allows a court to incarcerate a juvenile in a county jail for up to 30 days in a room or ward out of sight and sound from adult prisoners for certain violations of probation imposed under an order of disposition that delays imposition of sentencing.
- Delete two obsolete provisions pertaining to foster care home services.

Further, the Juvenile Code allows a court, under certain conditions, to order a child over whom the court has jurisdiction to be detained in a facility pending a hearing if a complaint has been made or a petition filed. If the child was taken into custody for certain status offenses (running away from home, disobedience, or truancy) or for escaping or attempting to escape from a medium- or high-security juvenile facility, the Code prohibits the child from being detained in a secure facility that restricts his or her movements and activities unless the child violated a court order and a finding was made that there was not a less restrictive alternative more appropriate to the child's needs. Currently, the Code does not apply the prohibition on placement in a secure facility for the listed status offenses to a

child who is under the court's jurisdiction for violating a municipal ordinance or state or federal law, to certain juveniles charged with a specified juvenile violation, or to a *child not less than 17 years of age who is under the court's jurisdiction pursuant to a supplemental petition*. The bill would raise the age in the italicized text from "not less than 17 years of age" to "not less than 18 years of age."

The bill is tie-barred to House Bills 4143 and 4145.

MCL 712A.14 et seq.

**House Bill 4143** would amend the Michigan Penal Code to prohibit a child under 18 years of age (raised from under 16), while under arrest, confinement, or conviction for a crime, from being:

- Placed in an apartment or cell of a prison or place of confinement with adults who are under arrest, confinement, or conviction for a crime.
- Transported in any vehicle used to transport inmates with adults charged with or convicted of a crime.

The bill is tie-barred to House Bills 4140 and 4145.

MCL 750.139

**House Bill 4145** would amend section 27a of Chapter IV of the Code of Criminal Procedure. Currently, with some exceptions, section 27a prohibits a juvenile from being confined in a police station, prison, jail, lock-up, or reformatory, or being transported with, or compelled or permitted to associate or mingle with, criminal persons (e.g., adults) while awaiting trial. However, the act allows a juvenile or an individual less than 17 years of age who is under the jurisdiction of the circuit court (adult criminal court or the Family Division of circuit court if being tried as an adult) for committing a felony to be confined in the county jail pending trial, if he or she is held physically separate from adult prisoners and the county sheriff has given prior approval. The bill would apply the provision to a juvenile or individual less than 18 years of age.

Currently, upon a motion by a juvenile or individual less than 17 years of age who is subject to confinement in a county jail as described above for committing a felony, a court may order the juvenile or individual to be confined as otherwise allowed by law. The bill would apply this provision to a juvenile or individual less than 18 years of age who is subject to confinement.

MCL 764.27a

### **House Bills 4141, 4443, and 4452**

House Bills 4141, 4443, and 4452 would amend provisions in various acts pertaining to commission of a *specified juvenile violation* to apply to juveniles less than 18 years of age (raised from 17).

*Specified juvenile violation* refers to a list of more serious offenses, such as rape, arson, assault with the intent to commit murder, and armed robbery, among others.

**House Bill 4141** would amend the Juvenile Code within the Probate Code to grant the Family Division of Circuit Court exclusive original jurisdiction over a juvenile under 18 years of age (raised from under 17) in certain circumstances, including a juvenile over 14 years of age charged with a specified juvenile violation if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant (known as an *automatic waiver*) to waive the juvenile to adult criminal court. (See **Brief Discussion**, below.)

MCL 712A.2 and 712A.2d

**House Bill 4443** would amend the Code of Criminal Procedure to allow a prosecutor to file a complaint and warrant with a magistrate in district court (adult criminal court) charging a juvenile 14 years or older but less than 18 (raised from less than 17) believed to have committed a specified juvenile violation (known as an *automatic waiver*).

MCL 764.1f

**House Bill 4452** would amend the Revised Judicature Act to specify that the circuit court has jurisdiction to hear and determine a specified juvenile violation if committed by a juvenile 14 years of age or older and under 18 (raised from under 17) years of age.

MCL 600.606

House Bills 4141, 4443, and 4452 are all tie-barred to one another.

### **House Bill 4144**

**House Bill 4144** would amend the Social Welfare Act to revise the manner in which funding is provided to counties related to providing juvenile justice services to juveniles to incorporate services provided to those 17 years of age who would become eligible for such services under the Raise the Age legislation.

Currently, the Department of Health and Human Services (DHHS) provides for the distribution of money appropriated by the legislature to counties for the cost of juvenile justice services as provided in the act. Juvenile justice services include such things as intake, detention, detention alternatives, probation, foster care, and diagnostic evaluation and treatment. For a county that is not a county juvenile agency, the amount distributed,

with some exceptions, must equal 50% of the annual expenditures from the county's child care fund.

Under House Bill 4144, this provision would expire September 30, 2023. Beginning October 1, 2023, the rate of reimbursement for all juveniles would be established in the annual appropriation act for the DHHS budget.

In addition, beginning October 1, 2021 (the date all but one of the bills in the RTA package take effect), the state would be required to pay 100% of the cost to provide juvenile justice services when a court exercises jurisdiction over a juvenile who is 17 years of age at the time of the offense. For youth under the court's jurisdiction for certain felony and status offenses [MCL 712A.2(a) and (d)], the costs would have to include all expenditures currently paid by a county and reimbursed by DHHS for expenditures for children not placed with DHHS for care, supervision, or placement [listed in subdivision (4)(b)] until jurisdiction is terminated. The bill specifies that there would be no change in funding provided for juveniles who are under 17 years old at the time of the offense. (This would hold until October 1, 2023, when the rate of reimbursement would be established in the DHHS annual budget.)

MCL 400.117a

### **House Bill 4146**

**House Bill 4146** would add a new section to the Social Welfare Act to create the Raise the Age Fund in the state treasury. The fund would be administered by the State Court Administrative Office (SCAO) to provide reimbursement through a grant program to counties, courts, and tribes adjudicating and providing services to juveniles who are 17 years of age at the time of the offense. Money or other assets from any source could be received by the treasurer for deposit into the Raise the Age Fund. The treasurer would direct investment of the fund and credit to it interest and earnings from the fund's investments.

Money would be disbursed from the Raise the Age Fund, as appropriated by the legislature, through a grant program created and administered by SCAO. Expenditures under the fund could only be used to administer the grant program, for costs to adjudicate juveniles who were 17 years old at the time they committed the offense, and for services provided to those juveniles. A request for reimbursement would have to be accompanied by substantiating documentation, as determined by SCAO.

An entity (county, court, or tribe) receiving money from the Raise the Age Fund would have to report expenditures made with the money to SCAO. Briefly, the report would have to include, at a minimum, the following:

- Personnel costs for staff providing direct services to the juveniles (includes full or appropriately prorated salaries and training).
- Contracted staffing, programming, and services.

- Placement and care costs, including at least room and board, clothing, incidentals, incentives, transportation, and treatment.
- Indirect administrative costs.

The bill would also require SCAO to provide relevant data to the legislature regarding juvenile offenders who were 17 years old at the time of the offense. For fiscal years 2020 and 2021, the relevant data would, at a minimum, include the number of juveniles, the number of petitions filed and adjudications, and the types of dispositions. For fiscal years 2022 and 2023, the data provided would concern those juveniles who received juvenile justice services provided with assistance of funds from the RTA grant program. The data would have to include, at a minimum, the number of juveniles 17 years old at the time of the offense served under the RTA grant program, the number of petitions filed and adjudications, and the types of dispositions.

Proposed MCL 400.117i

### ***BACKGROUND INFORMATION:***

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

### ***BRIEF DISCUSSION:***

The juvenile court process is quite different from the process in place for adults. Currently defined as a person less than 17 years of age, a juvenile who commits a criminal offense is typically adjudicated in the Family Division of Circuit Court. If the juvenile committed a felony, depending on the nature or seriousness of the offense, the juvenile may receive a typical juvenile disposition in Family Division (referred to as a delinquency proceeding), receive an adult sentence in Family Division, or be waived to adult criminal court and tried and sentenced as an adult.

***Delinquency proceeding:*** An adjudication in the Family Division of Circuit Court, also referred to as a *delinquency proceeding*, is not considered to be criminal, and the philosophy of the court is rehabilitation and treatment for the delinquent youth rather than punishment. The judge has wide discretion and can dismiss the petition against the juvenile, refer the juvenile for counseling, place the juvenile on probation (diversion), or place the case on the court's formal calendar or docket and allow charges to go forward. If the juvenile admits responsibility or is found responsible for (as opposed to "guilty of") committing the offense, the terms of *disposition* (similar to "sentencing" for adults) may include, among other things, probation, counseling, participation in programs such as drug or alcohol treatment, placement in a juvenile boot camp, restitution to victims, community service, placement in foster care, and/or payment of a crime victim rights assessment fee and reimbursement of court appointed attorney fees and other court services expenses.

A juvenile being adjudicated in a delinquency proceeding is often made a temporary ward of the county and supervised by the court's probation department. A juvenile who needs more intensive services may be made a ward of the state and supervised by the Michigan Department of Health and Human Services; known as an "Act 150" case, the juvenile may be placed in a residential treatment program. Upon completion of the term of residential care, the juvenile is often placed on "aftercare," where his or her progress and behavior can be monitored by the juvenile corrections department for a period of time, similarly to the role parole plays for an adult offender.

***Juvenile charged as adult:*** A juvenile who is charged with a felony may be treated and sentenced as an adult. This happens in three ways:

***Traditional waiver:*** A traditional waiver applies to a juvenile 14 to 16 years of age who is charged with any felony. The prosecuting attorney may petition the Family Division to ask that the court waive its delinquency jurisdiction and allow the child to be tried as an adult in a court of general criminal jurisdiction (adult criminal court). The Family Division retains discretion to waive the case to adult court or to proceed as a delinquency proceeding. If waived to adult court and convicted, the juvenile must be sentenced as an adult.

***Designated proceedings:*** Some more serious offenses are known as "specified juvenile violations" and include such crimes as arson, rape, assault with attempt to commit murder, and armed robbery. If a juvenile is charged with a specified juvenile violation, the prosecutor has the authority to designate the case to be tried in the Family Division but in the same manner as for an adult (this includes sentencing the juvenile as an adult).

The prosecutor can also ask the Family Division to designate a case that does not involve a specified juvenile violation for trial in the Family Division; this requires the juvenile to be tried in the same manner as an adult, and a guilty plea or verdict results in a criminal conviction. However, the court retains discretion to issue a typical juvenile disposition order, impose any sentence that could be imposed on an adult if convicted of the same offense, or delay sentencing and place the juvenile on probation.

***Automatic waiver:*** If a juvenile who is 14 to 16 years old commits a specified juvenile violation, the prosecutor has the discretion to initiate automatic waiver proceedings to waive the juvenile to adult criminal court by filing a complaint and warrant in District Court, rather than petitioning the Family Division. A preliminary hearing must be held to determine probable cause that the juvenile committed the offense or offenses; if so, the case is bound over to adult criminal court. If the juvenile is convicted of one or more very serious specified juvenile violations, the juvenile must be sentenced in the same manner as an adult. If the juvenile is convicted of an offense that does not require an adult sentence, the court must hold a juvenile sentencing hearing to determine whether to impose an adult sentence or to place the juvenile on probation and make the juvenile an Act 150 ward of the state.

(Information derived from the *Juvenile Justice Benchbook*, 3rd Edition, Michigan Judicial Institute, and from information on juvenile delinquency available on the Clare County Prosecuting Attorney Office website.)

## ***FISCAL INFORMATION:***

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

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

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

The Report notes a wide range cost estimates related to separating 16- and 17-year-old juveniles from adults. Those costs can range from re-opening or contracting for unused child caring institution beds to building new child caring institutions. These different local-level decision options make it difficult to determine a precise fiscal estimate.

### **House Bills 4133 to 4139 and 4142**

#### ***Department of Health and Human Services (DHHS)***

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

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

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

who now fall under the authority of the family division of the circuit court and on the placement decisions made by the court.

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

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

[It should be noted here that the "Raise the Age" legislative package includes House Bill 4144, which would revise the current 50/50 state-local cost sharing for the Child Care Fund and require that the state pay 100% of the costs of juvenile justice services for 17-year-olds who are under a circuit court's Family Division's jurisdiction for a criminal charge or are under concurrent jurisdiction with an adult criminal court for certain delinquency activities. See below for further discussion of House Bill 4144.]

### ***Department of Corrections***

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

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

### ***Courts***

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

increase in juvenile circuit court caseloads, there is also potential for shifting court resources, which could mean a cost-neutral situation for local units that have the ability to shift. Incremental costs would be incurred by prosecuting attorneys for handling juvenile cases versus adult cases, and county jails should see a decrease in the number of jail inmates. It is difficult to project the actual impact on each local unit due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, and case types. The impact of the bills would be unique to each local jurisdiction, and some jurisdictions would be affected more than others.

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

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

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

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

### **House Bills 4140, 4143, and 4145**

**House Bill 4140** would have an indeterminate fiscal impact on the Department of Corrections. The bill would result in a general fund/general purpose savings for the department, over time, if offenders aged 17 and under were no longer sentenced, under any circumstances, to adult prison facilities. This would depend solely on judicial placement

decisions. As of January 1, 2019, the department was housing 29 prisoners aged 17 and under. If the department did not house any offenders until they reached the age of 18, the department could potentially close half of one housing unit that houses this population, saving approximately \$2.5 million GF/GP. If the department did not house any offenders who committed their offenses prior to the age of 18 until they reached the age of 21, the department could close about 200 beds over the next 5 years, saving approximately \$3.0 million GF/GP.

House Bill 4140 would result in a cost increase to local courts because there would be more juveniles under court supervision. It is difficult to project the actual impact on each local unit due to variables such as prosecutorial practices, judicial discretion, and case types. When juveniles are placed at a juvenile detention or residential facility, in most cases, the expenses for these placements and other juvenile justice services will be paid by the state and the county in equal amounts through the Child Care Fund (50/50 state-local cost share).

**House Bill 4143** would have no fiscal impact on the state, but would affect local units of government. Under the bill, 16- and 17-year-olds would be prohibited from being placed with adults under arrest, confinement, or conviction. Currently, the law prohibits youth under the age of 16 from being placed with adults who are under arrest, confinement, or conviction; from remaining in a courtroom during the trial of adults; and from being transported in a vehicle with adults who are charged or convicted of crimes. Provisions of the bill, as written, reflect current policies of the Department of Corrections with regard to 16- and 17-year-olds.

Local units would incur costs for complying with provisions of the bill related to transporting 16- and 17-year-olds. Costs would depend on the extent to which current transportation and housing systems needed to be changed. When juveniles are placed at a juvenile detention or residential facility, in most cases, the expenses for these placements and other juvenile justice services will be paid by the state and the county in equal amounts through the Child Care Fund (50/50 state-local cost share).

**House Bill 4145** would have no fiscal impact on the state Department of Corrections, but would impact local units of government, in particular, the cities of Detroit and Flint. Currently, the Department of Corrections is paid by the City of Detroit to operate the Detroit Detention Center, which serves as the city's single lock-up center, housing 200 offenders. Also, the department funds and operates the lock-up for the City of Flint. Under the bill, offenders less than 18 years of age who are picked up and detained pending arraignment could no longer be confined at these and other locally operated detention centers/lock-ups.

Though local units would save on costs as a result of fewer lock-ups, they would incur costs for their responsibility to detain these individuals in another way that meets the requirements of the bill. When juveniles are placed at a juvenile detention or residential facility, in most cases, the expenses for these placements and other juvenile justice services will be paid by the state and the county in equal amounts through the Child Care Fund (50/50 state-local cost share). However, any local construction or other capital

improvement costs needed to ensure 16- and 17-year-olds are placed with adults are not eligible for state Child Care Fund reimbursement.

### **House Bills 4141, 4443, and 4452**

#### ***Department of Corrections and Judiciary***

House Bills 4141, 4443, and 4452 would have an indeterminate fiscal impact on the state Department of Corrections and on local court funding units. The impact would depend on the number of cases involving 17-year-olds who would no longer be tried as adults. A savings could be realized by the Department of Corrections if fewer juveniles are tried as adults and sentenced to adult prisons. It is difficult to project the actual impact on each local unit due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, and case types. Typically, juvenile proceedings are much more time-consuming than adult proceedings.

#### ***DHHS and Counties***

House Bills 4443 and 4452 could increase costs to the Department of Health and Human Services (DHHS) and to local county governments by an unknown amount. The bills are part of a larger package of legislative bills which, if enacted, would increase the maximum age of juvenile court jurisdiction from 17 to 18.

Any increase in costs to DHHS and county governments would depend upon on how many additional juveniles would no longer be tried as adults and would now be placed under DHHS or local court supervision through judicial discretion in the disposition of their cases and what placements or services might be ordered by the court.

### **House Bill 4144**

Currently, the state is required to reimburse counties for 50% of eligible expenses from county Child Care Funds for the costs of juvenile justice services. The state makes these reimbursements from the state Child Care Fund (CCF), which is a fund appropriated in the DHHS budget from which the state reimburses counties for 50% of eligible expenditures concerning the care and treatment for children who are court wards. The Fund reimburses counties for programs that serve neglected, abused, and delinquent youth, and funding may be expended for out-of-home placements such as foster homes or county-operated facilities. Expenditures may also be made for in-home services which allow children to remain in their own homes, and may include job training skills, intensive probation, community wraparound services, mentoring, family counseling, electronic tethers, alternatives to detention, and other community-based services.

In addition to the currently required 50% reimbursement to counties for other eligible expenses, the bill would require that the state pay 100% of the cost of juvenile justice services for 17-year-olds who are under a circuit court's Family Division's jurisdiction for a criminal charge or are under concurrent jurisdiction with an adult criminal court for certain delinquency activities.

Under current law, 17-year-old offenders are treated as adults and are not adjudicated under juvenile court jurisdiction. Therefore, the fiscal impact of this bill only occurs if the other bills that are part of the “Raise the Age” legislative package are enacted. If these bills were enacted along with this bill, there would be additional costs to the state and minimal costs to local units of government related to providing juvenile justice services. While the specific amount of these additional costs is not known at this time, a recently released legislatively commissioned report has provided estimates of the additional amount using historical data and surveys.

The Report presents a range of what the estimated additional costs might be to the state Child Care Fund should this category of 17-year-olds be adjudicated under juvenile courts and provided with juvenile justice services. The Report states that the amount of increase to expenditures from the state Child Care Fund (under the current 50/50 state-local cost sharing model) is expected to be between \$9.6 million and \$26.8 million. Under the bill’s provisions that the state pay 100% of eligible expenses, instead of the current law’s 50% requirement, this estimated range of expected additional costs would be doubled and the range of costs would be approximately \$19.2 million to \$53.6 million to the state.

Within this range, it is important to note that the amount of additional costs incurred by the state would be dependent upon a variety of factors. These would include factors such as judicial and prosecutorial discretion, the type and security level of the residential placement required for each juvenile, as well as their length of stay.

The fiscal impact of the bill’s requirement that beginning October 1, 2023, the reimbursement rate for all juveniles will be established in the department’s annual appropriation act is indeterminate at this time. Any change in the costs to the state and to local governments would be dependent upon the amount of any future changes made to the reimbursement rate and the state/local cost sharing model.

### **House Bill 4146**

House Bill 4146 would have no immediate fiscal impact on the state or on local units of government, but could eventually have an indeterminate fiscal impact on the state and local units of government.

Under the bill, the State Court Administrative Office (SCAO) would be required to create and administer a grant program using money from the Raise the Age Fund. Under the grant program, SCAO would be required to disburse money from the fund, as appropriated by the legislature, for costs to local counties, courts, or tribes, for adjudication and services provided to juveniles who were 17 years old at the time of committing an offense.

Funds for creation of the grant program and for reimbursement to locals are subject to appropriations to the Raise the Age Fund. Once appropriations are made, and as long as the fund has a sufficient balance, administration of the grant program would occur and reimbursement payments would be made. Because of these conditions, the fiscal impact is

indeterminate, as the bill requires further action by the current or a future legislature to appropriate money to the fund.

Once there is money in the fund, SCAO would incur costs for creation and administration of the program. SCAO would have to hire additional staff, but it is not known at this time how many staff would be necessary. Also, it is not known at this time what information technology-related products or services might be required to enable counties to consistently and uniformly communicate data to SCAO, which would be necessary for complying with reporting requirements contained in the bill.

### ***ARGUMENTS:***

#### ***For:***

Advocates presented many reasons why Michigan should join the 46 other states that have already “raised the age” and stopped automatically treating 17-year-olds as adults. A brief list includes the following:

- The experience of other states in raising the age to 18 has been overwhelmingly positive. Most have not seen the expense predicted, some have begun to see savings, and most have not seen a large influx of 17-year-olds into their juvenile justice systems. (Some have seen overall decreases in the number of older juveniles entering the criminal justice system, perhaps due in part to development of better and more efficient programming and services for juveniles.)
- RTA recognizes scientific evidence that the human brain does not fully mature until the mid-twenties.
- Juveniles, including those presenting to the criminal justice system at 17, are more amenable to being rehabilitated through the types of services and programming available in the juvenile justice system (which can also include services to the family).
- Juveniles in the adult system, even if not incarcerated, do not have access to beneficial services and programming that may lead to less recidivism (by some reports, juveniles who exit the adult system are 34% more likely to reoffend, reoffend sooner, and escalate to committing more violent crimes than those who remain in the juvenile justice system).
- Most first-time 17-year-old offenders are arrested for nonviolent offenses such as shoplifting, vandalism, and disorderly conduct.
- Young people of color are disproportionately impacted; RTA can provide greater access to age-appropriate services and not separate these children from the adults in their lives.
- Most juvenile offenders are victims of trauma such as abuse and/or neglect, been in foster care, and/or have mental health issues or developmental disabilities. All of these are known to increase the risk of being involved in the criminal justice system, but timely and appropriate age-related services and support can turn lives around.
- Youth sentenced to jail or prison, including 17-year-olds, are more likely to be physically and/or sexually assaulted (by staff and other prisoners), experience depression, and attempt or commit suicide (36% more likely) than those kept within the juvenile justice system.

- Youth sent to adult prison average 40% less in lifetime earnings, which increase the likelihood of needing government assistance in the future.
- Keeping more youth in the juvenile justice system allows more to avoid a criminal record that can impede the ability to pursue education, military service, employment, and housing.
- Treating 17-year-olds is not soft on crime; most 16- and 17-year-olds commit misdemeanors (79% by some studies) rather than serious felonies, and holding them (and their families) accountable can end the cycle of crime before they progress to more serious offenses.

***For:***

The Raise the Age legislation would not prevent a youth 17 or under from being tried as an adult. Youth who commit serious and violent crimes could still be waived or designated to adult court and tried as adults. A 17-year-old who would be waived or designated to adult court today most likely would still be transferred to adult court after the bills take effect. The main difference the legislation makes is that a 17-year-old who commits a crime would first be within the jurisdiction of the Family Division of Circuit Court. This gives judges and prosecutors more flexibility in considering mitigating factors and the need for services than the adult system provides. Though some may question whether a juvenile entering the criminal justice system at 17 has enough time to turn his or her life around, it has been reported that 17-year-olds show similar re-offense patterns to younger teens regarding cessation of criminal activity.

***Against:***

Although the proposed legislation has wide support, concerns still remain regarding how to fund the services that will be required to be provided to those 17-year-olds who will come into the juvenile justice system instead of the adult criminal justice system. In some cases, juvenile justice services can be much more expensive than dispensing adult sanctions. Plus, because a juvenile may need extensive programming and services such as counseling, the average cost for juvenile justice services per individual tend to be higher per year than if the individual were sent to the adult system. Therefore, some would like to see the funding piece put in place before the age is raised to automatically include 17-year-olds as juveniles.

***POSITIONS:***

Representatives of the following entities testified in support of the bills:

- Michigan Council on Crime and Delinquency (4-9-19)
- ACLU Michigan (4-9-19)
- Michigan Catholic Conference (4-9-19)

The following entities indicated support for the bills:

- Michigan Protection and Advocacy Service (4-16-19)
- Michigan's Children (4-9-19)
- Mackinac Center for Public Policy (4-9-19)
- Citizens for Prison Reform (4-9-19)

- League of Women Voters (4-16-19)
- Michigan League for Public Policy (4-16-19)
- One Love Global (4-9-19)
- Black Lives Matters Michigan (4-9-19)
- Coalition of Justice Voters (4-9-19)
- My Brothers Keeper/Girls Equity Network Michigan (4-9-19)
- The Ezekiel Project (4-9-19)
- The M.A.D.E. Institute (4-9-19)
- The Campaign for Youth Justice (4-9-19)
- Spectrum Juvenile Justice Services (4-9-19)
- The Sentencing Project (4-9-19)
- National Juvenile Justice Network (4-9-19)
- R Street (4-9-19)
- Lansing Church of the Brethren (4-9-19)
- Michigan Area United Methodist Church (4-9-19)

The Prosecuting Attorneys Association of Michigan indicated support for the bills pending funding for the initiative. (4-16-19)

The Michigan Association of Counties has not taken a position on the legislation, but testified to concerns regarding the issue of funding. (4-16-19)

The Michigan Probate Judges Association indicated a neutral position on the bills and submitted written testimony regarding several concerns with the legislation. (4-16-19)

The Department of State Police indicated a neutral position on HB 4443. (4-16-19)

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