

## HOLMES YOUTHFUL TRAINEE ACT REVISIONS

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**House Bill 4069 as enacted**  
**Public Act 31 of 2015**  
**Sponsor: Rep. Harvey Santana**

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

**House Bill 4135 as enacted**  
**Public Act 32 of 2015**  
**Sponsor: Rep. Kurt Heise**

**House Bill 4169 as enacted**  
**Public Act 33 of 2015**  
**Sponsor: Rep. Marcia Hovey-Wright**

**House Committee: Criminal Justice**  
**Senate Committee: Judiciary**  
**Complete to 7-20-16**

**BRIEF SUMMARY:** House Bill 4069 expands the ages of offenders eligible for trainee status under the Holmes Youthful Trainee Act to include 21-23 year olds; requires the consent of the prosecutor for assignment of youths aged 21-23 years of age; and allows a court to require a trainee to work, attend school, or wear an electronic monitor during any term of probation.

House Bill 4135 requires a court to revoke trainee status if the individual were convicted of certain crimes during assignment to trainee status.

House Bill 4169 revises the option to send a trainee to prison, prohibit assignment to prison for certain underlying charges, and creates a new option combining prison or jail with a period of community supervision. The provisions apply to cases in which an individual is assigned to youthful trainee status on or after the bill's effective date.

Each of the bills took effect August 18, 2015.

**FISCAL IMPACT:** Some of the bills' provisions may result in savings to the state's correctional system, but others may increase costs to both state and local correctional systems, as explained in more detail later in the analysis. (See *Fiscal Information*.)

### **THE APPARENT PROBLEM:**

Some believe that certain changes to the Holmes Youthful Trainee Act (HYTA) would better enable the act to achieve its intended goals. HYTA is not exactly a "program," but more of an approach to help young offenders avoid having a criminal record that could hinder them from moving forward in life. Eligibility for assignment to youthful trainee status is limited to older teenagers and young adults, persons who commit a crime after

their 17th birthday but before their 21st birthday and who plead guilty to that charge. Though HYTA is available for most misdemeanors and felonies, certain crimes are not eligible for assignment to HYTA, such as crimes for which the maximum penalty is life imprisonment, and traffic offenses, such as drunk driving. If a judge grants trainee status, a judgment of conviction is not entered and the person may be committed to no more than three years in prison, up to one year in jail, or up to three years on probation. During this time period, the court record and Michigan State Police records of the case are not available to the public. If the person successfully completes youthful trainee status, the case is dismissed and the record remains sealed from public access (the Michigan State Police will keep a nonpublic record that is accessible only by certain individuals and for specific purposes as authorized by statute). Thus, HYTA enables youthful offenders a chance to turn their lives around without the stigma of a criminal conviction that can hinder them from employment, housing, or financial aid for college.

However, some feel the act needs to be updated to recognize recent research indicating that the human brain doesn't fully mature until closer to the mid-20s. If 21 to 25 year olds are as similarly immature as their older teenage counterparts, it seems arbitrary to limit eligibility to those 17 to 20 years of age. A compromise proposal is to increase eligibility to include persons 21, 22, and 23 years of age as long as the county prosecutor agrees that HYTA assignment is appropriate.

In another matter, some feel that HYTA trainees may benefit from both a period of incarceration and a period of community supervision. As the act is currently written, a judge can only assign incarceration to prison or jail or to probation – but not to prison and probation or jail and probation. Further, though a judge has the authority to revoke trainee status (for instance, if the person commits a new crime), the act does not mandate circumstances under which trainee status should always be revoked. Some would like to see mandatory revocation for certain offenses committed while on trainee status.

Legislation has been offered to address these and other concerns.

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

**House Bill 4069** amends the section of the Code of Criminal Procedure known as the Holmes Youthful Trainee Act (MCL 762.11) to do the following:

- ❖ Expand eligibility so that it applies to youths whose offenses were committed on or after their 17th birthday but before their 24th birthday. This would include persons 21-23 years of age. Currently, only youths at least 17 years of age but less than 21 years of age are eligible for HYTA assignment.
- ❖ Require the consent of the prosecuting attorney if the criminal offense occurred on or after the individual's 21st birthday but before the individual's 24th birthday.
- ❖ Allow a court to require a person assigned to youthful trainee status to maintain employment or attend a high school, high school equivalency program, community college, college, university, or trade school. If the person is not employed or

attending school, the court could require the individual to actively seek employment or entry into one of the listed educational institutions.

- ❖ In addition to the above, allow a court to subject the trainee to electronic monitoring during a term of probation if the offense had been committed on or after the individual's 21st birthday.

**House Bill 4135:** Currently, under the act, a court may, at its discretion, terminate its consideration of an individual as a youthful trainee or, once assigned, revoke the status of a trainee at any time before the individual's final release from the program. The bill retains this provision.

The bill amends Section 12 of the act to add that if the court assigns an individual to youthful trainee status, the court must revoke that status if – during the period of assignment – the individual pleads guilty to or is convicted of any of the following:

- ❖ A felony for which the maximum penalty is imprisonment for life.
- ❖ A major controlled substance offense.
- ❖ A violation, attempted violation, or conspiracy to violate:
  - Felonious assault.
  - Assault with intent to do great bodily harm less than murder.
  - Assault with intent to rob and steal, unarmed.
  - Home invasion, 1st-3rd degrees.
  - Possession of firearm or distribution of ammunition by person convicted of felony.
  - Carrying a firearm or dangerous weapon with unlawful intent.
  - Carrying a concealed weapon.
  - Unlawful possession of a pistol.
  - Possession of firearm during commission of a felony.
  - Criminal sexual conduct in the 1st-4th degrees (other than 3rd-degree CSC with a victim at least 13 years of age but less than 16 years of age and 4th-degree CSC with a victim at least 13 years of age but less than 16 years of age and the actor is 5 years or more years older than the victim).
  - Carjacking.
  - Using force or violence during commission of a larceny.
- ❖ A violation, attempted violation, or conspiracy to violate the prohibition on assault with intent to commit criminal sexual conduct (other than 3rd-degree CSC with a victim at least 13 years of age but less than 16 years of age and 4th-degree CSC with a victim at least 13 years of age but less than 16 years of age and the actor is 5 or more years older than the victim).
- ❖ A firearm offense—a crime involving a firearm (defined in MCL 28.421 to mean any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive)—whether or not the possession, use, transportation, or concealment of a firearm is an element of the crime.

The act currently requires HYTA status to be revoked for an individual who is required to be registered under the Sex Offender Registration Act (SORA) if that individual willfully violates provisions of SORA. The bill would retain this provision.

**House Bill 4169:** Under the Holmes Youthful Trainee Act, prior to enactment of this bill, if the underlying charge is an offense punishable by imprisonment for a maximum term of more than one year, the court is required to do one of the following:

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

The bill amends the act (HYTA), MCL 762.13, to revise the options. If the charge were an offense punishable by a maximum term of imprisonment of one year, the court would have to do one of the following for a case in which an individual is assigned to youthful trainee status on or after the bill's effective date of August 18, 2015:

- ❖ With some exceptions noted below, send the trainee to prison for not more than two years (reduced from three). A trainee less than 21 years old would have to be committed to an institutional facility designated by the MDOC for that purpose (known as "HYTA prison"). Thus, a trainee 21 years of age or older would be housed in the general population.
- ❖ Place the trainee on probation for not more than three years subject to probation conditions as provided in Section 3 of Chapter XI of the Code.
- ❖ Commit the trainee to the county jail for not more than one year.
- ❖ With some exceptions noted below, commit the trainee to prison for not more than two years or to the county jail for not more than one year, and then place the trainee on probation for not more than one year subject to probation conditions as provided in Section 3 of Chapter XI of the Code of Criminal Procedure. A trainee placed on probation under this provision after being committed to prison would be reassigned to the supervision of a probation officer.

Currently, if a trainee is committed to the county jail or as a probation condition, the court has the discretion to authorize work release or release for educational purposes. The bill applies this provision also to a trainee who was sent to prison.

Exceptions:

An individual assigned to the status of youthful trainee *could not be sent to prison* under the above options if the underlying charge is for a violation of any of the following:

- ❖ Article 7 of the Public Health Code (Controlled Substances).
- ❖ Certain violations of the Michigan Penal Code:
  - Breaking and entering with intent to commit a felony or larceny.
  - 3rd-degree home invasion.
  - Certain crimes involving a credit or debit card, point-of-sale card, EFT card, or other financial transaction device.
  - Carrying a concealed weapon.
  - Larceny (includes scrap metal).

- Larceny by stealing from the person of another.
- Unlawful driving away of a vehicle.
- Using force or violence during the commission of a larceny.
- Stolen property, receive and conceal a motor vehicle.

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

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

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

### ***FISCAL INFORMATION:***

House Bill 4069: Under the bill, there would be an indeterminate amount of savings to the state's correctional system. The amount of savings would depend on the number of offenders actually diverted from prison sentences to Holmes Youthful Trainee Act probation terms. The average cost of prison incarceration in a state facility is roughly \$34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. Also, there could be additional community supervision costs depending on the increased number of offenders diverted to probation terms. Costs for probation supervision average about \$3,400 per supervised offender per year.

House Bill 4135: Under the bill, there could be increased costs to the state and to local correctional systems. Costs would depend on the number of offenders who are convicted of crimes set forth in the bill, have their youthful trainee status revoked, and are sent to either prison or to county jail. The average cost of prison incarceration in a state facility is roughly \$34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail vary by jurisdiction.

House Bill 4169: Under the bill, there would be an indeterminate amount of savings to the state's correctional system. The amount of savings would depend on the number of offenders actually committed to county jail that would have otherwise been committed to prison for not more than three years. The average cost of prison incarceration in a state facility is roughly \$34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. Also, there could be additional costs for county jails depending on the increased number of offenders committed to jail instead of to prison. The costs of local incarceration in a county jail vary by jurisdiction.

## **ARGUMENTS:**

### ***For:***

The bill package makes several significant changes to HYTA in keeping with the original intent of the act – to provide a second chance for deserving youthful offenders by keeping a criminal conviction off their records. First, **House Bill 4069** meets this goal by expanding the pool of youthful offenders eligible for HYTA assignment to include young adults ages 21, 22, and 23. This expansion acknowledges and incorporates recent research as to how the human brain matures. The inclusion of young adults represents a compromise as some, including advocates and judges, believe that 24 and 25 year olds should be eligible, as well, in keeping with the conclusions of scientists regarding the development of the brain and ability to make good decisions and judgments being reached closer to 25 or 26 years of age.

Another compromise involves requiring the county prosecutor to consent to the HYTA assignment for these older offenders. Many supporters of the bill feel prosecutorial consent may defeat the purpose of expanding the age cutoff with the result that some deserving older offenders may be denied eligibility even when the judge believes it appropriate. Prosecutors, on the other hand, feel that offenders 21 to 23 years of age are at a different level of maturity and development than their younger counterparts and therefore should be scrutinized more closely to ensure the safety of the public is not compromised. Besides, they point out, there is precedent as prosecutors must give consent before adult offenders are sent to problem solving courts, for example, a sobriety court.

### ***Response:***

The provisions regarding authorization for judges to impose probation conditions such as attending school or college and/or finding steady employment is redundant. Judges already have broad discretion to impose conditions appropriate to an offender's unique situation, including electronic monitoring, without being micromanaged by legislative language.

### ***For:***

The objective of HYTA is to result in no criminal convictions. Youthful offenders need to take this opportunity seriously. **House Bill 4135** emphasizes the point by clearly listing crimes for which a conviction or a guilty plea will result in forfeiture of youthful trainee status and the resultant loss of a clean record.

### ***Response:***

The objective of no criminal conviction for a youthful offender is obtained by looking at the elements and circumstances unique to each case. Most judges already terminate HYTA assignment if a person commits one of the listed crimes, commits other crimes in general, or sometimes for probation violations. However, the bill's mandate removes the all-important judicial discretion that allows for consideration of ALL the facts of a case and the appropriateness of keeping a particular person in HYTA. For some, it isn't until that second brush with the law that reality hits and true remorse leads to the life-changing behaviors HYTA is meant to engender.

### ***For:***

**House Bill 4169** addresses some important concerns regarding the prison option for HYTA assignees. The Department of Corrections, in looking for ways to reduce prison spending, suggested that the prison option be eliminated. Only a small percent of HYTA trainees are

sent to prison, but currently must be housed separately from the older adults. Housing them separately is more expensive, yet few would advocate putting them in general population where they may be at higher risk of victimization or may pick up criminal behaviors from older prisoners. However, sometimes the facts of a case warrant some prison time, thus some were loath to see that option eliminated.

House Bill 4169 addresses the issue by keeping the prison option but reducing the maximum prison sentence under HYTA to two years instead of three. Younger trainees would still be housed in "HYTA prison," the separate facility mandated by statute, but DOC could place the older ones (21-23) in the general population.

In addition, instead of being faced with an either/or of incarceration or probation, the bill creates a new option whereby a HYTA trainee could be sent to jail or prison and also be placed on probation afterward. Research supports that offenders who spend at least some time under community supervision (e.g., probation and parole) fare better than those who max out and are released into the community without any supervision to help with the transition. This should give judges more flexibility in deciding the best course of action to attain the goal of helping the person turn his or her life around.

Further, the bill creates a list of offenses for which prison would not be an option. Apparently, if sentenced for those crimes as an adult under the sentencing guidelines, the person would not be eligible for prison but instead would be put on probation and/or spend some time in the county jail. Some youthful offenders, on the other hand, are faced with going to prison under HYTA but eventually having a clean record or, if not assigned to HYTA, being placed on probation with or without some jail time and trying to have their record expunged at a future date under a different statutory provision. Since these are crimes that typically do not result in a prison sentence, allowing a judge to send a HYTA trainee to prison just increases costs for the DOC.

***Response:***

Again, the bill, by mandating which offenses for which a judge could not impose a prison sentence, takes away important judicial discretion as to what is appropriate for a particular offender. It is a judge, and for older offenders under the bill, the prosecutor, who must look at each case individually and decide what course of action is most likely to attain the desired result. Usually this involves an approach that combines appropriate punishment with opportunities for rehabilitation. Prison programming offers many the chance to receive needed services that help them deal with poor decision making, substance abuse, or anger management, to name a few. Jails offer no such programming.

In addition, it must be remembered that most charges are pleaded down to lower offenses. Thus, where the accepted plea would not ordinarily result in prison time for an adult offender being sentenced under the sentencing guidelines, many of these young adults had been charged initially with much more serious crimes. For example, one HYTA trainee was sent to prison for the offenses of unarmed robbery plus a felony firearm; the original charge must have been pleaded down to unarmed robbery if the person was convicted of having a firearm. Further, some of the offenses for which no prison sentence can be imposed on a HYTA trainee would— if sentenced under the sentencing guidelines— result in the person scoring in what is known, under sentencing guidelines, as a "straddle cell" for which prison is an option.

By providing a new option to combine prison or jail with a period of community supervision, and reducing the maximum prison term by one year, the DOC and local correctional systems are already likely to see some savings if this option results in shorter incarcerations. Judicial discretion to impose the appropriate sentence should be preserved, however, by eliminating the mandate restricting prison as an option for some offenses.

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