

Legislative Analysis



RAISE THE AGE

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

House Bill 4133 as enacted
Public Act 98 of 2019
Sponsor: Rep. Roger Hauck

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

House Bill 4134 as enacted
Public Act 99 of 2019
Sponsor: Rep. Douglas C. Wozniak

House Bill 4135 as enacted
Public Act 100 of 2019
Sponsor: Rep. Julie Calley

House Bill 4452 as enacted
Public Act 107 of 2019
Sponsor: Rep. LaTanya Garrett

House Bill 4136 as enacted
Public Act 101 of 2019
Sponsor: Rep. Ryan Berman

Senate Bill 84 as enacted
Public Act 108 of 2019
Sponsor: Curtis S. VanderWall

House Bill 4140 as enacted
Public Act 102 of 2019
Sponsor: Rep. Vanessa Guerra

Senate Bills 90, 100, and 101 as enacted
Public Acts 109, 113, and 114 of 2019
Sponsor: Sen. Peter J. Lucido

House Bill 4142 as enacted
Public Act 103 of 2019
Sponsor: Rep. Brian K. Elder

Senate Bill 93 as enacted
Public Act 110 of 2019
Sponsor: Sen. Stephanie Chang

House Bill 4143 as enacted
Public Act 104 of 2019
Sponsor: Rep. Leslie Love

Senate Bill 97 as enacted
Public Act 111 of 2019
Sponsor: Sen. Curtis Hertel, Jr.

House Bill 4145 as enacted
Public Act 105 of 2019
Sponsor: Rep. Graham Filler

Senate Bill 99 as enacted
Public Act 112 of 2019
Sponsor: Sen. Ruth Johnson

House Bill 4443 as enrolled
Public Act 106 of 2019
Sponsor: Rep. Michele Hoytenga

Senate Bill 102 as enacted
Public Act 97 of 2019
Sponsor: Sen. Sylvia Santana

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 12-20-19

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.

The bills take effect October 1, 2021. An individual 17 years of age or younger who commits a crime on or after that date will be considered a juvenile.

FISCAL IMPACT: The bills 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 is 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 of age. 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”—from 17 to 18 years of age—of individuals subject to automatic waiver to adult criminal court.

THE CONTENT OF THE BILLS:

House Bills 4133 to 4136 and 4142 and Senate Bills 84, 90, 93, and 99

These bills amend existing provisions of, 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 amends the Juvenile Code within the Probate Code to allow the Family Division of Circuit Court 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). Further, the bill changes references to the collection of a juvenile’s “fingerprints” to “biometric data.”

MCL 712A.11

House Bill 4134 amends 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 amends the Code of Criminal Procedure. Previously, eligibility for placement under the Holmes Youthful Trainee Act (HYTA) was 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** instead limits 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 involves certain factors that constitute the criminal sexual conduct offenses. **The bill** amends 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 amends the Juvenile Diversion Act. Previously, the term “minor” as used in that act meant an individual less than 17 years of age. **The bill** defines “minor” as an individual less than 18 years of age. The bill also requires 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 4142 amends the Code of Criminal Procedure. Previously, the code generally required that a child less than 17 years of age must be taken immediately before the Family Division of Circuit Court when arrested. If during the pendency of a criminal case it was learned that the child was less than 17 years of age, the case had to be transferred immediately to the Family Division in the county where the offense was alleged to have been committed. **The bill** retains these provisions, but raises the age to *less than 18 years of age*, to apply the provisions to 17-year-olds.

Previously, if during the pendency of a criminal case in a court other than the Family Division it was determined that the child was 17 years of age, the case could 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 found that any of the conditions existed as outlined in section 2(d) of the Juvenile Code. **The bill** eliminates this provision.

[Section 2(d) of the Juvenile Code allows the 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

Senate Bill 84 amends 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

Senate Bill 90 amends the Juvenile Code within the Probate Code to do the following:

- Raise the age in the definition of “juvenile.” “Juvenile” means 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. Previously, if a person was found to be under the age of 17 while he or she was being charged with a crime in a court other than the Family Division, the case had to be transferred to the Family Division without delay. The bill applies this provision to a person under *18 years of age*.

MCL 712A.1 and 712A.3

Senate Bill 93 amends the Youth Rehabilitation Act. Previously, to meet the definition of “public ward,” a court needed to acquire jurisdiction over the youth, and the act for which the youth was being committed had to have occurred, before the youth’s seventeenth birthday. The bill raises the age to apply to the court’s obtaining jurisdiction over the youth, and to acts committed, before the youth’s eighteenth birthday.

MCL 803.302

Senate Bill 99 amends 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 is 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) is subject to criminal contempt of court.

MCL 764.15b

House Bills 4140, 4143, and 4145 and Senate Bill 97

Generally speaking, these bills 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.

House Bill 4140 amends the Juvenile Code within the Probate Code to do all of the following:

- Prohibit confining a juvenile under the age of 18 (raised from 17), who was 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 Family Division of Circuit 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 the Family Division 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.

MCL 712A.16, 712A18, and 712A.18i

House Bill 4143 amends 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.

MCL 750.139

House Bill 4145 amends section 27a of Chapter IV of the Code of Criminal Procedure. 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 applies this provision to a juvenile or individual less than 18 years of age.

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 applies this provision to a juvenile or individual less than 18 years of age who is subject to confinement.

MCL 764.27a

Senate Bill 97 amends the Juvenile Code within the Probate Code. In certain circumstances, juveniles under the age of 17 could be housed in a jail, prison, or other place of detention used to house adults as long as the juveniles were physically separated (out of sight and sound) from the adult offenders. The bill revises provisions within the Juvenile Code pertaining to the detention or incarceration of juveniles under the age of 17 years to instead apply to juveniles under the age of 18 and deletes two obsolete provisions pertaining to foster care home services.

MCL 712A.14 and 712A.15

House Bills 4443 and 4452 and Senate Bill 100

These bills 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.

Senate Bill 100 amends 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 (instead of a juvenile under 17) in certain circumstances, including truancy, running away from home, and disobedience to his or her parents or guardian. Under the bill, the court also has jurisdiction over a juvenile under 18 years of age (instead of under 17) when a juvenile over 14 years of age is charged with a specified juvenile violation and 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

House Bill 4443 amends 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 amends the Revised Judicature Act (RJA) 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

Senate Bill 101

Senate Bill 101 amends the Social Welfare Act to revise the manner in which funding is provided to counties related to providing juvenile justice services to juveniles. The bill incorporates services provided to a juvenile who was at least 17 years of age, but under 18 years old, who becomes eligible for such services under the Raise the Age legislation.

Generally speaking, the Social Welfare Act establishes a juvenile justice funding system for counties that are not county juvenile agencies that is administered by the Department of Health and Human Services (DHHS). The funding system includes establishment of a child care fund. The act provides for the distribution of money appropriated by the legislature to reimburse counties for the cost of providing juvenile justice services. 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 (section 117a(4)(c)). This provision is not amended by the bill.

However, beginning October 1, 2021 (the date the bills in the Raise the Age package take effect), the bill requires the state to pay 100% of the cost to provide juvenile justice services when a court (Family Division of Circuit Court) exercises jurisdiction over a juvenile who is at least 17 years old, but under 18, at the time of the offense. For those youth under the court's jurisdiction for a criminal offense or certain delinquency activities, or if under concurrent jurisdiction with an adult court for delinquency activities, the costs must include all expenditures listed in section 117a(4)(b) until such time as the court's jurisdiction is terminated. The bill specifies that there will be no change in funding provided for juveniles who are under 17 years old at the time of the offense.

[Section 117a(4)(b) lists the costs to be reimbursed for expenditures for children not placed with the MDHHS for care, supervision, or placement. Expenditures listed include direct expenditures for out-of-home and in-home care and administrative or indirect expenditures for out-of-home and in-home care. See the act for a complete list of expenditures required to be included under each category.]

Beginning October 1, 2025, the reimbursement rate for all juveniles changes to a new percentage rate. Using data from FY 2021-22, FY 2022-23, and FY 2023-24, the new percentage rate is calculated as the quotient of the following:

- The sum of the total state expenditures under section 117a(4)(c) for juveniles under age 17 at the time of the offense and the total expenditures for 17-year-old juveniles under section 117a.
- Divided by the total expenditures under section 117a for all eligible juveniles.

MCL 400.117a

Senate Bill 102

Senate Bill 102 adds a new section to the Social Welfare Act to create the Raise the Age Fund, which will reimburse a county, court, or tribe for costs related to providing services under the Raise the Age legislation that are not eligible for reimbursement from the Child Care Fund.

The Raise the Age Fund is created within the state treasury. Money or other assets from any source can be received by the treasurer for deposit into the fund. The treasurer must direct investment of the fund and credit to it interest and earnings from the fund's investments. Money in the Raise the Age Fund at the close of a fiscal year remains in the fund and does not lapse to the general fund.

The Department of Health and Human Services (DHHS) is tasked with administering the Raise the Age Fund. The department must expend money from the fund, as appropriated by the legislature, to support the cost of raising the age of criminal responsibility for costs not eligible for reimbursement through the Child Care Fund as provided in the act (section 117a(4)(j)). Eligible costs include those listed and associated with a court's exercising jurisdiction under section 2 of the Juvenile Code (within the Probate Code) *over a juvenile who is 17 years of age but under the age of 18 at the time of the offense*. A request for reimbursement must be accompanied by substantiating documentation, as determined by DHHS.

A county, court, or tribe receiving money from the Raise the Age Fund must report expenditures made with the money. The report must include at least the following:

- Personnel costs for 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 at least room and board, clothing, incidentals, incentives, transportation, and treatment.
- Indirect administrative costs, including at least judicial staff and operational expenditures necessary to carry out the judicial process.

A request for reimbursement is subject to approval by the department. A court, tribe, or county may appeal a reimbursement that was not approved. An 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 pertaining to costs eligible for reimbursement as in nonjury cases under the authority provided in section 631 of the RJA. (That section provides that such matters be brought before the circuit court of the county of which the appellant is a resident or to the circuit court of Ingham County.)

MCL 400.117i

BACKGROUND INFORMATION:

With the exception of Senate Bill 102, which is new to the package this session, the bills are reintroductions of legislation introduced in both the 2015-16 and 2017-18 legislative sessions.

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”).¹ 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.

Department of Health and Human Services (DHHS)

Senate Bill 101

Currently, the state and counties share the cost of juvenile justice services in a 50/50 state-local cost sharing model. For the cases in which the county is the first payer, 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. In the current fiscal year, FY 2019-2020, the state Child Care Fund is appropriated \$228.2 million (2019 PA 67). 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.

¹ 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>

In addition to the currently required 50% reimbursement to counties for other eligible expenses, the bill would require that beginning October 1, 2021, the state pay 100% of the cost of juvenile justice services for 17-year-olds at the time of the offense 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.

Senate Bill 101 would also require that, beginning October 1, 2025, the reimbursement rate for all juveniles would change to a new percentage rate. Using data from FY 2022, FY 2023, and FY 2024, the new rate would be calculated as the quotient of the following:

- The sum of the total state expenditures under section 117a(4)(c) for juveniles under age 17 at the time of the offense and the total expenditures for 17-year-old juveniles under section 117a.
- Divided by the total expenditures under section 117a for all eligible juveniles.

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 additional 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.

House Bills 4134 to 4136 and 4142 and Senate Bills 93 and 99

These bills would increase costs to DHHS and to county Child Care Funds, and the increase would be included in the overall range of net cost increases presented by the Report of \$27.0 million to \$61.0 million annually. 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 bills would increase costs for services such as probation, foster care placement, or institutional placement, and for many of these 17-year-old offenders, these costs 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 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. Under the provisions of Senate Bill 101, these increased costs for 17-year-olds would be paid 100% by the state until October 1, 2025. After that date, a new cost-sharing percentage rate would replace the current 50/50 state-local cost sharing model and these additional costs would be incorporated in the calculation of the new rate.

House Bills 4140 and 4143 and Senate Bill 97

House Bill 4140 and Senate Bill 97 would increase the number of juveniles receiving juvenile justice placements and services resulting in a cost increase to DHHS.

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 Bills 4443 and 4452

The bills could increase costs to DHHS and to local county governments by an unknown amount. 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.

Senate Bill 102

The bill would have no immediate fiscal impact on DHHS, but could eventually have an indeterminate fiscal impact to the department. Under the bill, DHHS would administer the new Raise the Age Fund and would expend money from the fund upon appropriation by the legislature. Any increased costs to the department would be dependent upon additional administrative costs that might be incurred for the administration of the fund and any reimbursement request appeals.

Courts

House Bill 4140 and Senate Bill 97

The bills 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). Because of the increase in the number of juveniles receiving juvenile justice placements and services, there would be a similar cost increase to DHHS.

Senate Bills 90 and 99

The 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:

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

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 4443 and 4452 and Senate Bill 100

The bills would have an indeterminate fiscal impact 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. 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.

Senate Bill 102

The bill would have no immediate fiscal impact on the state or on local units of government, but could eventually have an indeterminate fiscal impact on local court funding units. It could cost a county, court, or tribe to report on expenditures made with funding they receive from the Raise the Age Fund. However, costs to report could most likely be supported with existing financial resources. Local court systems could incur additional costs depending on the number of appeals cases (appealing disapproved reimbursements from the Raise the Age Fund) to go before the courts and how appeals cases affect overall caseloads and related administrative costs.

Department of Corrections

House Bill 4140 and Senate Bill 97

The bills would have an indeterminate fiscal impact on the Department of Corrections. The bills 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 June 30, 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 4143

The bill 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

The bill 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.

Senate Bills 90 and 99

The bills could produce marginal general fund/general purpose savings for the Department of Corrections. Under Senate Bill 92, 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 Senate Bill 92, the department 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 5 as of July 1, 2019. Also, as of that same date, the department was housing 29 prisoners aged 17 and under, so any savings to the department from housing fewer prisoners would be nominal. 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.

House Bills 4443 and 4452 and Senate Bill 100

The bills would have an indeterminate fiscal impact on the state Department of Corrections. 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 MDOC if fewer juveniles are tried as adults and sentenced to adult prisons.

Department of Licensing and Regulatory Affairs (LARA)

Senate Bill 84

The bill would be unlikely to have a significant fiscal impact on LARA or on funding units of local indigent defense systems. By revising the definition of “adult” to include persons age 18 or older, rather than 17 or older, the bill could decrease the number of persons who would qualify for indigent defense. Given the manner by which indigent defense services are provided in this state, the potential reduction of 17-year-olds receiving indigent defense would be unlikely to result in any significant cost savings for the Michigan Indigent Defense Commission within LARA or for local funding units. Furthermore, fewer individuals qualifying for indigent defense services could result in lower revenues from partially indigent defendant reimbursements. Any resulting reduction of revenues is likely to be nominal.

ARGUMENTS:

For:

Advocates, employers, and former inmates who were incarcerated as adults at age 17 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 of those reasons 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 to incorporate 17-year-olds into the juvenile system, 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).

- 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.
- 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. Most first-time 17-year-old offenders are arrested for nonviolent offenses such as shoplifting, vandalism, and disorderly conduct. Holding them (and their families) accountable through the types of services and court oversight provided to juveniles can end the cycle of crime before the progression to more serious offenses.
- 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.

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 re-offense patterns similar to younger teens regarding cessation of criminal activity.

For:

By some estimates, when the bills take effect, over 7,500 additional youthful offenders could be eligible for county services as juveniles instead of automatically being treated as adults in the adult criminal justice system. Despite broad support for the legislation, concern as to how counties could absorb that many youth into their juvenile justice systems was a concern. 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 tends to be higher per year than if the individual were sent to the adult system. However, broader access to community-based services at 17 could turn more lives around. In time, savings could be realized if fewer went on to commit more, or more serious, crimes.

Senate Bills 101 and 102, as enacted, represent a different approach from earlier versions of the bills. First, 17-year-olds will not be automatically diverted to the juvenile justice system until October 1, 2021. This will provide some time for counties to begin to prepare for an influx in the number of juveniles requiring services. Second, the state will cover the costs for the first few years while data are being collected and analyzed. Based on that data, in October of 2025, a new percentage rate for reimbursements to counties will be put into place. In addition, Senate Bill 102 enables counties to seek reimbursement, from a newly created fund, for services that are not eligible for reimbursement under the funding mechanism in Senate Bill 101 that are provided to those juveniles who are at least 17 years old when the offense was committed.

In addition, it should be noted that not every 17-year-old who commits a crime will go into the juvenile justice system: those who commit serious felonies may still be waived to adult court and face adult criminal sanctions. Therefore, the approach taken in the bills should soften the impact on local governments and ensure a smooth transition by providing time for any needed legislative “tweaks” to be adopted.

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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.