



Senate Fiscal Agency
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BILL ANALYSIS

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House Bills 4133 (Substitute S-1 as reported)
House Bills 4134 through 4139 (Substitute H-1 as reported without amendment)
House Bill 4140 (Substitute S-1 as reported)
House Bills 4141 through 4143 (Substitute H-1 as reported without amendment)
House Bill 4144 (Substitute S-1 as reported)
House Bill 4145 and 4146 (Substitute H-1 as reported without amendment)
House Bill 4443 (Substitute H-1 as reported without amendment)
House Bill 4452 (Substitute H-1 as reported without amendment)

Sponsor: Representative Roger Hauck (H.B. 4133)
Representative Douglas C. Wozniak (H.B. 4134)
Representative Julie Calley (H.B. 4135)
Representative Ryan Berman (H.B. 4136)
Representative Michael Webber (H.B. 4137)
Representative Daire Rendon (H.B. 4138)
Representative David LaGrand (H.B. 4139)
Representative Vanessa Guerra (H.B. 4140)
Representative Sheldon Neeley (H.B. 4141)
Representative Brian K. Elder (H.B. 4142)
Representative Leslie Love (H.B. 4143)
Representative Tommy Brann (H.B. 4144)
Representative Graham Filler (H.B. 4145)
Representative Mary Whiteford (H.B. 4146)
Representative Michele Hoitenga (H.B. 4443)
Representative LaTanya Garrett (H.B. 4452)

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety

CONTENT

House Bill 4133 (S-1) would amend the juvenile code to specify that if a juvenile reached his or her 18th, instead of 17th, birthday after a juvenile petition is filed, the family court's jurisdiction would continue and the court could hear and dispose of the petition under the Code.

House Bill 4134 (H-1) would amend Chapter 10 (Criminal Provisions) of the Mental Health Code to revise the definition of "juvenile" to refer to a person who was under 18, instead of 17, years of age who was the subject of a delinquency petition.

House Bill 4135 (H-1) would amend the Code of Criminal Procedure to refer to an offense committed on or after a person's 18th, rather than 17th, birthday for a court's determination to assign the person to youthful trainee status.

House Bill 4136 (H-1) would amend the Juvenile Diversion Act to revise the definition of "minor" to refer to an individual less than 18, instead of 17, years of age.

House Bill 4137 (H-1) would amend the Michigan Indigent Defense Commission Act to revise the definition of "adult".

House Bill 4138 (H-1) would amend the Youth Rehabilitation Services Act to revise the definition of "public ward" to refer to acts committed before a youth's 18th, rather than 17th, birthday.

House Bill 4139 (H-1) would amend the Code of Criminal Procedure to modify provisions pertaining to a PPO issued to enjoin domestic violence or stalking to refer to an individual who was 18, instead of 17.

House Bill 4140 (S-1) would amend the juvenile code to do the following:

- Prohibit a juvenile under 18 years of age taken into custody from being confined with or transported with criminal or dissolute people.
- Delete a provision allowing a court to commit a child to a county jail within the adult population if he or she is at least 17 years of age and is in violation of a personal protective order.

House Bill 4141 (H-1) would amend the juvenile code to grant a family court exclusive original jurisdiction over a juvenile under 18, instead of 17, years of age.

House Bill 4142 (H-1) would amend the Code of Criminal Procedure to do the following:

- Modify a provision pertaining to filing a juvenile petition to refer to if a child under 18, instead of 17, were arrested.
- Delete a provision allowing a court to transfer a case to family court, while a criminal case against a child is pending in a court other than a family court, if it is determined that the child is 17 and certain conditions exist.

House Bill 4143 (H-1) would amend the Michigan Penal Code to prohibit a child under 18, rather than 16, years of age, while under arrest, confinement, or conviction, from being placed in a place of confinement or transported with an adult who has been charged or convicted of a crime.

House Bill 4144 (S-1) would amend the Social Welfare Act to modify the method of reimbursement for payment of juvenile justice services, beginning October 1, 2021.

House Bill 4145 (H-1) would amend the Code of Criminal Procedure to do allow a court, upon motion, to order a juvenile or individual less than 18, instead of 17, years of age to be confined as otherwise provided by law.

House Bill 4146 (H-1) would amend the Social Welfare Act to do the following:

- Create the "Raise the Age Fund" within the State Treasury.
- Require the State Court Administrative Office (SCAO) to create and administer a grant program to disburse money from the Fund for costs to adjudicate and for services provided for juveniles who were 17 years old at the time of the offense.
- Require a county, court, or tribe to report to SCAO regarding expenditures of money for costs, such as personnel providing direct services to youths and youth placement and care costs.
- Require SCAO to provide to the Legislature relevant data regarding juvenile offenders who were 17 years old at the time of the offense, for fiscal years 2020 and 2021.

-- Require SCAO to provide to the Legislature relevant data regarding juvenile offenders who were 17 years old at the time of the offense who received juvenile justice services provided with the assistance of funds from the grant program, for fiscal years 2022 and 2023.

House Bill 4443 (H-1) would amend the Code of Criminal Procedure to modify the age for which a prosecuting attorney could authorize the filing of a complaint and warrant on a specified juvenile violation.

House Bill 4452 (H-1) would amend the Revised Judicature Act to modify the age for which a circuit court would have jurisdiction to hear and determine a specified juvenile violation.

Each bill, except House Bill 4146 (H-1), would take effect on October 1, 2021. House Bill 4146 (H-1) would take effect 90 days after its enactment. House Bill 4139 (H-1) is tie-barred to House Bills 4133, 4134, 4137, 4142, and 4145. House Bills 4143 (H-1) is tie-barred to House Bill 4145. House Bill 4141 (H-1), 4443 (H-1) and 4452 (H-1) are tie-barred.

MCL 712A.11 (H.B. 4133) Legislative Analyst: Stephen Jackson
330.2060a (H.B. 4134)
762.11 (H.B. 4135)
722.822 & 722.828 (H.B. 4136)
780.983 (H.B. 4137)
803.302 (H.B. 4138)
764.15b (H.B. 4139)
712A.16 et al. (H.B. 4140)
712A.2 (H.B. 4141)
764.27 (H.B. 4142)
750.139 (H.B. 4143)
400.711a (H.B. 4144)
764.27a (H.B. 4145)
Proposed MCL 400.117i (H.B. 4146)
MCL 764.1f (H.B. 4443)
600.606 (H.B. 4152)

FISCAL IMPACT

House Bills 4133 (S-1) & 4142 (H-1) effectively would raise the age from 16 to 17 for an individual to have his or her case adjudicated in the Family Division of Circuit Court. The bills would not create new offenses or increase the number of potential defendants in total, so there should not be a net increase in the number of cases. Any increase in juvenile cases would be offset by a corresponding decrease in the number of adult cases. Any change in costs would be due to the difference in the cost between the case types, magnitude of the shift in defendants, and intensity of judicial involvement.

Information provided by SCAO indicates that there were 29,959 juvenile cases in Michigan from July 2015 to July 2016, the last year for which data are available. It is expected that there would be an increase of 7,564 cases from raising the age of the juvenile offenders to less than 18 years of age. There would be a total net zero change in the number of cases as the increase in the juvenile cases would be expected to be shifted from the adult courts to the Family Division of the Circuit Court.

House Bill 4134 (H-1) could have a negative fiscal impact on State and local government. As the bill would expand the definition of juvenile to those under 18, instead of 17, years of age, there is a potential for an increase in the number of juvenile competency evaluations. An increase in competency evaluations could increase costs to local governments, as this would

be a cost to the delinquency proceedings. If a competency evaluation resulted in the provision of additional mental health treatment, there could be an increase in costs to State and local government.

House Bill 4135 (H-1) would have an indeterminate fiscal impact on the State and could have a negative fiscal impact on local government. Currently, 17- to 23-year-old offenders who are sentenced to prison or probation may be granted Holmes Youthful Trainee Act (HYTA) status at the discretion of prosecutors and the courts. The bill would remove 17-year-olds from eligibility. It is unclear whether this would make prosecutors and courts less likely to sentence 17-year-olds to prison, but if there were a reduction in prison sentences, the Michigan Department of Corrections (MDOC) would see reduced costs.

There could be a much larger shift in costs regarding HYTA probationers. If a 17-year-old offender is on felony probation with HYTA status, the costs of that probation are the responsibility of the MDOC. There are between 300 and 450 17-year-old offenders on HYTA probation at any given time. The average cost for felony probation supervision is approximately \$3,000 per probationer per year. Costs could be increased for local governments and the Department of Health and Human Services (DHHS) depending on the alternative dispositions that were reached in these cases.

House Bills 4136 (H-1) and 4443 (H-1) would have no fiscal impact on State or local government.

House Bill 4137 (H-1) would have an indeterminate, but likely minimal, fiscal impact on the Department of Licensing and Regulatory Affairs and on local government. The magnitude of the fiscal impact on the Department and to local court systems would depend on the number of 17-year-old individuals who used indigent defense services.

Revising the definition of adult would mean that individuals who are 17 years of age no longer would be subject to the Michigan Indigent Defense Commission Act. However, any cost savings to local court systems likely would not result in cost savings for the Department because of the likely minimal effect on compliance plans submitted to the Michigan Indigent Defense Commission by local systems. The Department could see decreased remittances of funds collected by locals from partially indigent defendants, depending on the number of 17-year-old individuals who are subject to these collections. While data are currently unavailable, this number likely is small and would not have a significant fiscal impact on the Department.

House Bill 4138 (H-1) could result in a decrease in the number of individuals who would be remanded to prison as it would raise the age of a person considered a "public ward". If there were fewer dispositions to prison and an increase in county-level supervision, there would be a decrease in costs to the MDOC with an offsetting increase in costs to the DHHS and local government.

For any decrease in prison intakes, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year. In the long term, if the decreased intake of prisoners reduced the total prisoner population enough to allow the MDOC to close a housing unit or an entire facility, the marginal savings to State government would be approximately \$34,550 per prisoner per year. For DHHS facilities, over the course of a fiscal year, the State serves approximately 250 juveniles in two State-run juvenile facilities. There also are private agency facilities that provide placement options for youths found responsible for their offenses. The marginal cost for placement in these facilities is not known, but since the fixed costs of these facilities are spread over a much smaller population base compared to the MDOC facilities, these marginal costs likely would be higher than for placements in a larger adult correctional facility. If there is a larger cost for placement in the

MDOC facilities than in the DHHS or private facilities, then there would be savings to the State. If the DHHS or private placements are more expensive than the MDOC placement, there would be a cost to the State. The solely DHHS-supervised individuals are considered State ward board and care (SWBC) cases and the costs are shared between the counties and State. In this arrangement, the State pays first and the counties are reimbursed 50% of the costs, if there is no cost allocation methodology change.

Additionally, there are court wards who could be under the supervision of the court or the DHHS. These individuals also are funded through a cost-sharing regime between the State and local government similar to the SWBC individuals, except in the case of the court wards, the counties pay first and are reimbursed 50% of the costs by the State under the Child Care Fund (CCF) payment system, if there is no cost allocation methodology change. Any 17-year-old offender who otherwise would have been supervised by the MDOC and, under the bill, would be considered a juvenile, his or her supervision would be funded through the SWBC or CCF, depending on the outcome of his or her delinquency proceedings.

House Bill 4139 (H-1) would have an indeterminate fiscal impact on State and local government. As the bill would change the age, from less than 17 years of age to less than 18 years of age, for a person to be subject to criminal contempt of court for violating a PPO, the penalties for a violation would change. Currently, if the person is less than 17 years of age, he or she is subject to delinquency proceedings, while anyone 17 or older is subject to adult penalties. The bill would allow a 17-year-old to be subject to a delinquency proceeding for violating a PPO, which could lead to a decrease in costs to the MDOC if fewer individuals were sentenced to prison. The costs for the DHHS and local government could increase depending on the outcomes of those delinquency proceedings. The costs to counties could be offset, as a violation of a PPO that otherwise would lead to a stay in jail could be changed to a dispositional alternative under the bill.

House Bill 4140 (S-1) would have an indeterminate fiscal impact on the State and could have a negative fiscal impact on local government, if the current State and local 50%-50% juvenile justice cost sharing methodology were maintained. If there were a change to the allocation in costs, the fiscal impact would be contingent on that methodology. The bill would prohibit juveniles 17 years of age and younger from being held in a jail or detention facility that also housed adults unless he or she was an individual 15 years of age or older whose habits or conduct was considered a menace to other juveniles, or who could not otherwise be detained safely and was housed in a room or ward separate from adults. The bill would prohibit family courts from imposing a jail or prison sentence on an individual who was under 18 years of age. These prohibitions would decrease the demand for prison and jail beds and increase the demand for the use of juvenile-only facilities. Placement of these individuals would be subject to judicial discretion and could result in an increase in the use of county juvenile detention facilities, State juvenile justice residential treatment facilities, and private juvenile justice residential foster care facilities. If an individual under 18 years old were the responsibility of a county, there would be a 50%-50% cost sharing arrangement between the State and county, either through the State Ward Board and Care (SWBC) Fund or the Child Care Fund (CCF) payment system.

The total cost of the changes proposed by the bill would be subject to judicial placement decisions. Since it is unknown how many individuals would be affected by the proposed changes, one way to analyze the potential impact of the proposed changes is to examine the current number of individuals in MDOC facilities who are under 18 years of age and the per diem rates of the various juvenile facilities.

The following tables give some context to the per diem expenses. As shown in Table 1, county juvenile detention facilities have rates that range between \$160 and \$180. The total capacity

of these facilities is not known. These rates are from FY 2014-15, the fiscal year for which the most recent data are available. [Table 2](#) displays the cost and capacity for State juvenile justice residential facilities with a per diem cost of approximately \$300 and a total capacity of 80 beds per day between the two facilities. [Table 3](#) has the current per diem rates and number of licensed beds (as of February 15, 2019) with a total of 43 contracted private juvenile residential foster care facilities in the State and a total licensed bed capacity of 3,412.

Table 1

Five Most Populous Counties' Juvenile Detention Facilities Per Diem Rates	
County	Per Diem Rates
Wayne	N/A
Oakland	\$170
Macomb	\$170
Kent	\$180
Genesee	\$160

Table 2

State Juvenile Justice Residential Treatment Facilities' Per Diem Costs FY 2016-17			
Facility	Annual Youths Served	Bed Capacity	Per Diem Costs
Bay Pines Center	93	45	\$301
Shawono Center	57	40	\$312

Table 3

Private Juvenile Justice Residential Foster Care Per Diem Rates FY 2018-19		
Range of Per Diem Rates	Number of Facilities	Total Number of Licensed Beds
\$209	18	1,518
\$291-\$299.50	11	915
\$305-\$321	14	979

It is not known how many individuals who are currently placed in county jails who, under the bill, would no longer be allowed in the same facility as adults; however, there is information available concerning those individuals under 18 who are supervised in MDOC facilities. The bill would result in a General Fund/General Purpose (GF/GP) savings for the MDOC, but those savings would depend solely on judicial placement decisions. As of March 2019, the MDOC houses 30 prisoners under the age of 17. If the Department did not house any offenders until they reached the age of 18, the Department could close half of one housing unit that houses this population, which would save just under \$2.0 million GF/GP.

Using the MDOC figures, these individuals cost approximately \$183 per diem. For a determination of the cost shift impact on the DHHS and local government (assuming all individuals are placed in residential care), a blended weighted average per diem cost was used to reach an estimate. A \$263 per diem for a blend of the three types of facilities would cost \$2.8 million for 30 responsible juveniles no longer held in an MDOC facility. This is an estimated increase of \$800,000 in total costs. However, under current law for these 30 individuals, there would be a 50% share in costs for DHHS and local government. Both State and local government would be responsible for \$1.4 million under current funding mechanisms. The State would save \$600,000 in total, though it would be a \$2.0 million

savings for the MDOC and a \$1.4 million cost increase for the DHHS. As this is an estimate, if the per diem costs ended up higher than those in this scenario, any savings to the State would be lessened. As these estimates depend on the assumptions made above, this cost estimate is uncertain. Some factors that could change these cost estimates include an increase in caseload, a change in judicial placement decisions, more intensive/restrictive placements, a lack of bed capacity, or a change in the cost allocation methodology.

For local government, there would be an increased cost for any increase in the number of individuals supervised as court wards who otherwise would be supervised in an MDOC facility. For instance, given the current cost allocation methodology, under the example described above, the increased cost to the counties for those 30 individuals would be \$1.4 million.

House Bill 4141 (H-1) would have an indeterminate fiscal impact on the State and local courts. The impact would depend on how many cases would be heard in the Family Division of Circuit Court instead of a court for adult cases. Since juvenile proceedings typically require more time to adjudicate, there could be increased resource demands on the courts, depending on how many cases remained before the family court.

House Bill 4143 (H-1) could have a negative fiscal impact on State and local government. It would bar the DHHS and local governments from transporting juveniles under the age of 18 with adults charged with or convicted of a crime. Alternative transportation measures would need to be implemented, which could lead to an increased cost to the transportation provider.

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

The bill would result in a GF/GP savings for the Department of Corrections but would depend solely on judicial placement decisions. Currently, the Department houses 30 prisoners aged 17 and under. If the Department did not house any offenders until they reached the age of 18, the Department could close half of one housing unit that houses this population, saving just under \$2.0 million GF/GP.

House Bill 4144 (S-1) would have a significant fiscal impact on State and local government. Under current law, the State and each county government share the cost of juvenile justice services on a 50% split. For children placed with the courts for care, supervision, or placement, the county spends the funds for services and then submits a request to the DHHS for 50% reimbursement of allowed expenditures.

The County Child Care Fund is an annually appropriated item in the DHHS budget, and is the mechanism that funds both abuse and neglect cases, as well as juvenile justice cases. For fiscal year (FY) 2019-20, the total amount appropriated in the CCF is approximately \$228.2 million. For year-to-date FY 2018-19, the total amount spent in the CCF is approximately, \$156.0 million. This amount represents approximately 50% of the total State and local expenditures for the CCF. Under the bill, by amending the Social Welfare Act, the State, until September 30, 2025, would maintain its 50% coverage for CCF services, and beginning October 1, 2021, would provide funding to cover 100% of the incremental costs associated with 17-year-old offenders.

As of October 1, 2025, the reimbursement rate for the CCF would be a blended formula calculated based upon sum of the 50% reimbursements paid for juveniles under 17 years of age and the average cost, expressed as a percentage, of 100% of the total expenditures for

17-year-old offenders compared to all eligible juvenile costs for FY 2021-22, FY 2022-23, and FY 2023-24.

As a practical matter, the other bills in the "Raise the Age" legislative package would need to be enacted, otherwise 17-year-old offenders would not be covered by the CCF and the proposed changes to the CCF would not apply. Assuming that the other bills in the package were enacted, the increased cost to the State likely would be considerable. To determine the costs beginning in FY 2020-21, it is necessary to calculate the costs for 17-year-old offenders. Since there is a lack of comprehensive statewide juvenile justice data, the best cost estimates can be taken from a report contracted by the State of Michigan Legislative Council Criminal Justice Policy Commission.¹ The report noted that on a statewide basis, the costs to provide services to 17-year-old offenders could increase total child care fund costs from 5.0% to 14.0%, based on FY 2015-16 child care costs. If these percentages are applied in the FY 2019-20 budget, for a 5.0% increase in CCF expenditures, the total estimated 100% State-funded costs would be \$19.3 million. On the high end, a 14.0% increase to cover 17-year-old offenders would be \$54.3 million for 100% State costs. Beginning on October 1, 2025, the blended reimbursement rate would incorporate the cost experience of 17-year-old offenders for the three preceding fiscal years. It is not known until that time what the cost experience will be for 17-year-old offenders, but it is likely it will result in a greater than 50% reimbursement rate to counties and tribal governments.

This is a high-level estimate using the percentages cited in the report and does not include various factors such as judicial and prosecutorial discretion, the type and security level of the residential placement required for each juvenile, and length of stay. For local governments, the costs would be more uncertain, as each county would face a different set of facts and circumstances. There are 83 counties in Michigan and it would be quite difficult to predict each county's implementation costs. A fiscal estimate would depend on the set of variables that each county would use in caring for 17-year-old offenders' cases.

House Bill 4145 (H-1) could have a negative fiscal impact on the State and would have an indeterminate fiscal impact on local government. Since the bill would prohibit anyone less than 18 years of age from being confined in a county jail pending trial, alternative confinement arrangements could be used for these individuals. The alternative arrangements likely would be in a county juvenile detention facility, a State juvenile justice residential treatment facility, or a private juvenile justice residential foster care facility. This would mean increased expenses for the Department of Health and Human Services. Counties would no longer have the option to confine these individuals in the county jail, so there could be fiscal savings, but the net cost or savings would depend on where the individuals were housed pending trial and the incremental difference in cost between a juvenile justice facility and the county jail.

The Michigan Department of Corrections is paid by the City of Detroit to operate the Detroit Detention Center, which serves as the city's lock-up center and houses up to 200 offenders. The Department also funds and operates the lock-up for the City of Flint. The bill would prohibit individuals under 18 from being housed at these and other locally-run lock-ups. There could be a decrease in costs for the lock-ups, but there would be a corresponding increase for local governments as they would be responsible for detaining these individuals consistent with the bill's requirements.

House Bill 4146 (H-1) would have no fiscal impact on the SCAO and local units of government, including circuit courts, counties, and tribal courts, assuming an annual appropriation fully covered increased costs for implementation of the bill.

¹ State of Michigan Legislative Council Criminal Justice Policy Commission, "The Cost of Raising the Age of Juvenile Justice in Michigan Final Report", March 2018. Retrieved on 10-9-19.

The bill would require SCAO to administer a program to provide local units with grants to cover the increased costs of adjudicating as juveniles those offenses committed by person who were 17 years old at the time of the offense. The State Court Administrative Office would be authorized to cover its own expenses from the Raise the Age Fund to administer the program, which could include additional staffing, programing and services. It also would have to provide information to the Legislature for the next four years regarding juvenile adjudications by offenders who were 17 at the time of the offense. Currently, SCAO does not have these data, and would have to coordinate with circuit courts statewide in order to get it. The bill also would have a minimal fiscal impact on the Department of Treasury, which would be covered within current appropriations.

House Bill 4452 (H-1) would have an indeterminate negative impact on circuit court systems that likely would be absorbed by current funding levels. Raising the age for juvenile proceedings increases the frequency of those proceedings at the circuit court level. Typically, fewer juvenile proceedings end in a plea agreement than in adult criminal proceedings, meaning the average costs of juvenile proceedings exceed those of adult criminal proceedings. For this reason, increased numbers of juvenile proceedings in circuit courts is expected to increase costs, but it is not known by how much.

Date Completed: 10-15-19

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