Legislative Analysis

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JUVENILES: "RAISE THE AGE"

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House Bill 4947 as introduced
Sponsor: Rep. Peter J. Lucido

House Bill 4948 as introduced
Sponsor: Rep. Martin Howrylak

House Bill 4949 as introduced
Sponsor: Rep. Dave Pagel

House Bill 4950 as introduced
Sponsor: Rep. LaTanya Garrett

House Bill 4951 as introduced
Sponsor: Rep. Anthony G. Forlini

House Bill 4952 as introduced
Sponsor: Rep. Michael Webber

House Bill 4953 as introduced
Sponsor: Rep. Chris Afendoulis

House Bill 4954 as introduced
Sponsor: Rep. Harvey Santana

Committee: Criminal Justice
Complete to 11-25-15

BRIEF SUMMARY:

The bills amend and 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 where a juvenile is to be detained. Other bills in the package include House Bills 4955-4966.

BACKGROUND INFORMATION:

The juvenile court process is quite different than 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 may 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 (as opposed to "guilty") for 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 needing 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 similar 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: Applies to a juvenile 14-16 years of age who is charged with any felony. The prosecuting attorney may petition the Family Division asking 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 14-16 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 information on juvenile delinquency available on the Clare County Prosecuting Attorney Office website.)

DETAILED SUMMARY:

House Bills 4947-5954 are tie-barred to each other and to a still-to-be-introduced bill. These bills amend various acts to apply provisions that currently apply to minors 16 years old and under to those 17 and under. The bills take effect 90 days after enactment.

House Bill 4947 amends the Juvenile Code within the Probate Code (MCL 712A.1, 712A.3, and 712A.11). The bill does the following:

- Raises the age in the definition of "juvenile." "Juvenile" would mean a person who is less than 18 years of age (rather than less than 17) who is the subject of a delinquency petition. (The term does not include a juvenile who has been waived to adult criminal court to be tried and sentenced as an adult.)

- Raises the age of a person (from 16 to 17) whose case must be transferred to the Family Division of Circuit Court. Currently if, while being charged in a court other than Family Division, the person is found to be under the age of 17, the case must be transferred to the Family Division without delay. The bill applies this provision to a person under *18 years of age.*

- Allows the Family Division to continue to have jurisdiction over a person who is the subject of a juvenile petition (delinquency petition), and to hear and dispose of that petition, even after the person's 18th birthday (raised from 17).

- Changes references to "fingerprints" to "biometric data."

House Bill 4948 amends the Code of Criminal Procedure (MCL 764.27). In general, the Code requires that a child less than 17 years of age be taken immediately before the Family Division when arrested. If during the pendency of a criminal case it is learned that the child is less is 17 years of age, the case must be transferred immediately to the Family Division in the county where the offense is alleged to have been committed. The bill raises the age to *less than 18 years of age* to also apply the provisions to 17 year olds.

Currently, if during the pendency of a criminal case in a court other than the Family Division it is determined that the child is 17 years of age, the case may be transferred to the Family Division upon a motion by the prosecuting attorney, the child, or his or her representative–but only if the court finds that any of the conditions exist as outlined in Section 2(d) of the Juvenile Code. The bill would increase the age in this provision to 18 years of age.

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

House Bill 4949 amends the Juvenile Diversion Act (MCL 722.822 and 722.828). Currently, the term "minor" means an individual less than 17 years of age. The bill defines minor to mean 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).

House Bill 4950 amends the Youth Rehabilitation Act (MCL 803.302). Currently, to meet the definition of "public ward," the act for which the youth is being committed must occur before the youth's seventeenth birthday. The bill raises the age to apply to acts committed before the youth's eighteenth birthday.

House Bill 4951 amends the Mental Health Code (MCL 330.2060a). The bill revises the definition of "juvenile" to mean a person who is less than 18 years of age who is the subject of a delinquency petition, instead of a person less than 17 years of age.

House Bill 4952 amends the Code of Criminal Procedure (MCL 764.15b). 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 will be subject to dispositional alternatives listed in the Juvenile Code. An individual 18 years of age and older (instead of 17 years of age and older) will be subject to criminal contempt of court.

House Bill 4953 amends 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" contained in the definition of "adult". (MCL 780.983)

House Bill 4954 amends the Code of Criminal Procedure (MCL 762.11). Currently, eligibility for placement under the Holmes Youthful Trainee Act (HYTA) is limited to an individual who committed a crime on or after his or her 17th birthday but before his or her 24th birthday. The bill would instead limit eligibility to an individual who committed a crime on or after his or her 18th birthday but before his or her 24th birthday. (Thus, a juvenile who committed a crime on or after his or her 17th birthday but before his or her 18th birthday would no longer be eligible for youthful trainee status.)

FISCAL IMPACT:

House Bills 4947 and 4948

As introduced, HB 4947 and HB 4948 would have an indeterminate fiscal impact on local courts. The impact 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 the local units that have the ability to shift. It is difficult to project the actual impact on each local unit due to variables such as law enforcement practices, prosecutorial practices, and judicial discretion.

According to SCAO, in the past 365 days, (November 2014 to November 2015), there were 17,763 cases involving 17-year old defendants in Michigan district courts and 4,649 delinquency cases in the family division of circuit courts. The impact of the bills would be unique to each jurisdiction and some jurisdictions would be impacted more than others. The average potential increase in caseload per county, with the addition of 17-year olds from district court to the family court docket is estimated at approximately 26%. The top 10 most impacted jurisdictions include:

Court	Possible Projected Caseload Increase
Kalkaska	84%
Oakland	63%
Schoolcraft	59%
Wayne	56%
Huron	56%
Leelanau	54%
St. Clair	50%
Dickinson	47%
Iron	47%
Oceana	49%
Houghton	46%
Clinton	43%
Mackinac	43%
Livingston	42%
Lapeer	42%
Lake	41%
Emmet	40%

House Bill 4950

As introduced, HB 4950 could increase costs to the Department of Health and Human Services (DHHS) and to local county governments by an unknown amount. The bill is one of a larger package of legislative bills which, if enacted, would increase the maximum age of juvenile court jurisdiction from age 17 to 18. The bill would redefine which youth shall be considered "public wards" as those youth accepted for care by the DHHS (defined as a youth agency) for acts committed before his or her eighteenth birthday (instead of before his or her seventeenth birthday as in current law). The term "youth agency" is defined in

this section as either the DHHS or a county juvenile agency. However, at this time, no county juvenile agency has ever been established in the state.

This new inclusion of 17-year olds as public wards that, under the provisions of the bill, would remain under the juvenile justice system jurisdiction and be placed be under the care of the DHHS would mean that these youth would potentially receive juvenile justice services and treatment that they might not have been eligible for under current law.

Currently, if these 17-year olds were tried in criminal courts and found guilty and incarcerated by the Department of Corrections, their care and treatment would be funded by the Department of Corrections. However, the provisions of the bill would categorize these 17-year old juveniles as public wards which would mean that the expenses for their care would be funded by DHHS and county governments. In most cases, the expenses of the youth's care and treatment would be categorized as State Ward Board of Care (SWBC) in which the state would make the expenditures initially and then bill the county for reimbursement of 50% of those costs.

The amount of increased cost to DHHS and county governments would depend upon how many 17-year olds are designated public wards by the courts and, thus, eligible for care and treatment in the juvenile justice system. Since the number of these potential 17-year olds is unknown, it is not possible to determine the amount of any increase in costs.

House Bill 4951

As introduced, HB 4951 could increase costs to the DHHS and to local county governments by an unknown amount. The bill is one of a larger package of legislative bills which, if enacted, would increase the maximum age of juvenile court jurisdiction and services from 17 to 18. The bill would revise the definition of a "juvenile" in the Mental Health Code to mean a person who is less than 18 years of age who is the subject of a delinquency petition, instead of a person who is less than 17 years old as in current law.

Section 1062 of the Mental Health code (MCL 330.2062) provides that the court may order by its own initiation or at the request of the juvenile or his/her representative, a competency evaluation, at which time the delinquency proceeding shall temporarily cease. This new inclusion of 17-year olds as juveniles that may receive a competency evaluation would mean that there may potentially be additional juveniles requiring these evaluations and additional mental health services being required than there would have been under current law. Under the provisions of the bill, there could be additional costs to DHHS and county governments for additional court-ordered mental health services to be provided to a juvenile by DHHS or other mental health services providers, as well as any placements or services that are required to be provided.

The amount of increased cost to DHHS and county governments would depend upon how many 17-year olds are ordered by the court to complete a competency evaluation and what additional treatments or services are ordered by the court as a result. Since the number of these potential 17-year olds is unknown, it is not possible to determine the amount of any increase in costs.

House Bill 4952

Corrections. As introduced, HB 4952 could produce marginal savings for the state Department of Corrections. Persons 17 years of age who violate personal protection orders related to domestic violence or stalking would now be subject to dispositional alternatives listed in the Juvenile Code, instead of being subject to criminal contempt of court and potentially housed under the jurisdiction of the Department of Corrections. It is not known how many 17-year olds will violate personal protection orders and be subject to dispositional alternatives, instead of to criminal contempt of court. Therefore, it is not possible to assign an amount of savings to be achieved.

DHHS and Counties. HB 4952 could increase costs to DHHS and to local county governments by an unknown amount. The bill is one of a larger package of legislative bills which, if enacted, would increase the maximum age of juvenile court jurisdiction from 17 to 18. The bill's provisions would raise the age requirement from "under 17 years" to "under 18 years" for persons who violate domestic abuse or stalking personal protection orders who may receive dispositional alternatives rather than possible imprisonment under the jurisdiction of the Department of Corrections. The expenses of incarceration for any of these 17-year olds found guilty under current law and incarcerated by the Department of Corrections would be funded by that Department; however, the expenses of many of the dispositional alternatives that the 17-year olds could now qualify for under the provisions of the bill, such as probation, foster care placement, or institutional placement, would be funded by DHHS and counties in most cases.

For children who are court wards, county courts initially pay for the required care and treatment services and DHHS reimburses 50% of those eligible expenditures back to the county through the Child Care Fund. The amount of increased cost to DHHS and county governments would depend upon how many 17-year olds will violate these personal protections orders and then be subject to dispositional alternatives and what alternatives were ordered by the courts. Since the number of these potential 17-year olds is unknown, it is not possible to determine the amount of any increase in costs.

House Bill 4954

Corrections. As introduced, HB 4954 could create a savings within the state Department of Corrections. Under the bill, there would be fewer 17-years olds under HYTA probation supervision and prison status. The impact from the number of 17-year old HYTA prisoners would be minimal, as there were only two as of February 2015. The impact from the number of 17-year old HYTA probationers would be more substantial. In 2013, there were between 300 and 450 HYTA probationers at any given time. Under the bill, the Department of Corrections would no longer be responsible for supervising these youth, which, in FY 2014, cost roughly $2,700 per supervised offender per year.

DHHS and Counties. House Bill 4954 could increase costs to the DHHS and to local county governments. Under the provisions of the bill, 17-year olds would no longer be eligible to be assigned the status of youthful trainee by the courts and receive HYTA status.

Currently, there are 17-year old HYTA youth that are supervised by and their expenses are funded by the Department of Corrections. Any increase in costs to DHHS and county governments would depend upon on how many additional 17-year olds would now be placed under DHHS or local court supervision through judicial discretion in the disposition of their cases and what placement or services might be ordered by the court.

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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.