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BILL



ANALYSIS

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House Bill 4957 (Substitute H-1 as passed by the House)
House Bill 4958 (as passed by the House)
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Sponsor: Representative Kurt Heise
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 10-18-16

CONTENT

House Bill 4957 (H-1) would amend the juvenile code to do the following:

- Prohibit a child under 18 years of age from being held in a jail or detention facility for adults, but allow him or her to be held in a detention facility for juveniles.
- Modify provisions relating to the custody of a juvenile for violation of a personal protection order (PPO).
- Prohibit a juvenile under 18 years of age taken into custody from being confined with or transported with criminal or dissolute people.
- Eliminate a provision that allows a court to order the detention of a juvenile 15 years of age or older if he or she exhibits menacing conduct or habits.
- Eliminate language that allows a juvenile over 17 years of age within a court's jurisdiction to be boarded in the county jail if separated from adult criminals.
- Specify that a juvenile could not be confined in a jail or prison for a conviction of an offense for which he or she was tried as an adult until he or she was 18 years of age.
- Eliminate a provision allowing the incarceration of a juvenile for up to 30 days for a probation violation.
- Specify that an order for reimbursement for the cost of care could not require an amount exceeding the amount of redetermined adoption assistance provided to a juvenile.

House Bill 4958 would amend the Code of Criminal Procedure to do the following:

- Eliminate provisions relating to the confinement of a juvenile who has committed a felony, or whose habits or conduct are considered menacing to other children.
- 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 4959 (H-1) would amend the Michigan Penal Code to do the following:

- 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.
- Eliminate an exception for prisoners being transported to or from, or confined in, a youth correctional facility.

The bills are tie-barred to each other, and would take effect October 1, 2018.

House Bill 4957 (H-1)

Detention of Child Taken into Custody

The juvenile code allows a local police officer, sheriff or deputy sheriff, State Police officer, county agent or probation officer of any court, without a court order, to take into custody a child who is found violating a law or ordinance, or for whom there is reasonable cause to believe is violating or has violated a PPO. The officer who takes the child into custody must attempt to notify the parent, guardian, or custodian.

While awaiting the arrival of the parent, guardian, or custodian, a child under the age of 17 taken into custody may not be held in a detention facility unless he or she is completely isolated so as to prevent any verbal, visual, or physical contact with an adult prisoner.

Under the bill, instead, a child under the age of 18 could not be held in a jail or any other detention facility for adults but could be held in a detention facility for juveniles, while awaiting the arrival of a parent, guardian, or custodian.

Custody of Certain Children

A child taken into custody under Section 2(a)(2) to (4) of the code, or for running away from home, may not be detained in a secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders unless the court (the Family Division of Circuit Court) finds that the child willfully violated a court order and that there is not a less restrictive alternative more appropriate to the child's needs. The bill would eliminate language specifying that this provision does not apply to a child under the jurisdiction of the court for having violated a municipal ordinance, State law, or Federal law, or a child at least 17 years old and under the jurisdiction of the court pursuant to a supplemental petition for a PPO.

(Section 2(a) generally provides for the circumstances under which the family court has exclusive original jurisdiction in proceedings concerning juveniles under 17 years of age who are found within the county. Sections 2(a)(2) to 2(a)(4) specify that the family court has exclusive original jurisdiction in proceeding concerning a minor who has deserted his or her home without sufficient cause and has refused alternative placement, a minor who is repeatedly disobedient to a parent's or guardian's reasonable commands, or a minor who willfully and repeatedly absents himself or herself from school or other learning programs or repeatedly violates rules and regulations of the school or learning program.)

A child taken into custody as described above may not be detained in a cell or other secure area of a secure facility designed to incarcerate adults unless a) the child is under the court's jurisdiction for having violated a municipal ordinance, State law, or Federal law which, if committed by an adult, would be a felony; or b) the child is at least 17 years old and under the court's jurisdiction under a supplemental petition for a PPO. The bill would eliminate the first exception and would apply the second to a child who was at least 18 years of age.

Detention & Care of Juveniles

Currently, if a juvenile under the age of 17 is taken into custody or detained, the juvenile may not be confined in a police station, prison, jail, lock-up, or reformatory or transported with, or permitted to associate with criminal or dissolute people. The bill would refer to a juvenile under the age of 18.

Under certain circumstances, the court may order a juvenile 15 years of age or older whose conduct is considered a menace to other juveniles, or who may not otherwise be safely

detained, placed in a jail for adults, but separated from adults and for not more than 30 days, unless a longer detention is necessary. The bill would delete this provision.

The Code allows the county board of commissioners in each county or of counties contracting together to provide for the diagnosis, treatment, care, training, and detention of juveniles in a child care home or facility if it meets various licensing standards. The court or a court-approved agency may arrange for the boarding of juveniles in any of the following:

- If a juvenile is within the court's jurisdiction under the code, a suitable foster care home subject to the court's supervision.
- A child caring institution or child placing agency licensed by the Department of Licensing and Regulatory Affairs to receive juveniles within the court's jurisdiction.

The court or court-approved agency also may arrange for the boarding of a juvenile in the county jail if the juvenile is over 17 years of age, and is boarded in a room or ward separate and apart from adult criminals. The bill would eliminate this option.

Orders of Disposition

Under Section 18 of the code, if the court finds that a juvenile concerning whom a petition is filed is not within code, the court must enter an order dismissing the petition. Except as otherwise provided, if the court finds that a juvenile is within the code, it may enter an order of disposition that is appropriate for the welfare of the juvenile and society, including an order to commit the juvenile to a public institution, the Department of Health and Human Services, or other facility or agency, subject to the code's requirements.

The bill would eliminate 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 PPO.

If a court entered a judgment of conviction under Section 2d, it may enter any disposition listed under Section 18 or, if the best interests of the public would be served, impose any sentence upon the juvenile that could be imposed upon an adult convicted of the offense for which the juvenile was convicted. Under the bill, this would apply except that a juvenile could not be confined in a jail or prison until he or she was 18 years of age. (Section 2d governs the procedure for trying a juvenile as an adult for a "specified juvenile violation".)

Currently, an order of disposition placing a juvenile in or committing a juvenile to care outside of his or her own home and under State, county juvenile agency, or court supervision must contain a provision for reimbursement by the juvenile, parent, guardian, or custodian for the cost of care or service. The order must be reasonable, taking into account both the income and resources of the juvenile, parent, guardian, or custodian. If the juvenile is receiving an adoption support subsidy under the Social Welfare Act, the amount may not exceed the amount of the subsidy. Under the bill, the amount also could not exceed the amount of redetermined adoption assistance provided to a juvenile under the Act.

(An adoption support subsidy is monthly financial assistance paid to adoptive parents of certain adoptees to be used for expenses associated with caring for an adopted child. Redetermined adoption assistance is a payment that may be justified when extraordinary care or expense is required for a condition that existed or the cause of which existed before an adoption from foster care was finalized.)

If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation, other than by having been convicted of a felony or a misdemeanor, the court may impose sentence or order any of the following for the juvenile:

- A change of placement.
- Community service
- Substance abuse counseling.
- Mental health counseling.
- Participation in vocational-technical education program.

Instead of "substance abuse counseling", the bill would refer to "substance use disorder counseling".

A court also may order incarceration in a county jail for not more than 30 days as provided in the juvenile code. If a juvenile is under 17 years of age, the juvenile must be placed in a room or ward out of sight and sound from adult prisoners. The bill would eliminate these provisions.

House Bill 4958

Under the Code of Criminal Procedure, a juvenile, other than a juvenile under 17 confined for committing a felony, may not be confined in a police station, prison, jail, lock-up, or reformatory, or be transported with, or compelled or permitted to associate or mingle with, a criminal person while awaiting trial. A juvenile whose conduct or habits are considered a menace to other children, or who may not otherwise be safely detained, may be placed in a jail or other place of detention for adults, but in a room or ward out of sight and sound from adults.

The bill would eliminate the provision under which a juvenile may be placed in a jail or other place of detention for adults. The bill also would delete provisions that allow a juvenile under 17 to be confined in jail pending trial as an adult for a felony if the juvenile is held separately from adult prisoners.

The Code allows a court, upon motion of a juvenile less than 17 years old who is subject to confinement for the commission of a felony, for good cause shown, to order the juvenile to be confined as otherwise provided by law. Under the bill, this language would apply to a juvenile less than 18 years old who was subject to confinement.

House Bill 4959 (H-1)

The Penal Code specifies that, except for prisoners being transported to or from, or confined in a youth correction facility, a child under 16 years of age while under arrest, confinement, or conviction for a crime, may not be placed in an apartment or cell of a prison or place of confinement with an adult who is under arrest, confinement, or conviction for a crime, or be permitted to remain in a courtroom during the trial of adults, or be transported in a vehicle in company with adults charged with or convicted of a crime.

Under the bill, this provision would apply to a child under the age of 18. The bill would eliminate the exception pertaining to prisoners being transported to or from, or confined in a youth correction facility. The bill also would delete the provision under which juveniles may not be permitted to remain in a courtroom during the trial of an adult.

The Code requires all cases involving the commitment or trial of children under 16 years of age for a crime or misdemeanor, before any court, to be heard and determined by the court at a suitable time, designated by it, separate and apart from the trial of other criminal cases. Under the bill, this provision would apply to cases involving the commitment or trial of children under 18 years of age.

A person who violated these provisions would be guilty of a misdemeanor, as is currently the case.

FISCAL IMPACT

House Bill 4957 (H-1)

The bill would have an indeterminate fiscal impact on the State and could have a negative fiscal impact on local government. The bill would prohibit juveniles 17 years of age and younger from being held in a jail or detention facility that also houses adults and also would prohibit family courts from imposing a jail or prison sentence for an individual who was less than 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 less than 18 years old were the responsibility of the county, there would be a 50%-50% cost sharing between the State and county respectively, either through the State Ward Board and Care (SWBC) Fund or the Child Care Fund (CCF) payment system.

The total cost for 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 impact of the changes is to examine the current number of individuals in Michigan Department of Corrections (MDOC) facilities who are less than 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 is not known. 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 August 1, 2016) with a total of 56 private juvenile residential foster care facilities in the State and a total licensed bed capacity of 3,820.

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 Fiscal Year 2014-15			
Facility	Annual Youths Served	Bed Capacity	Per Diem Costs
Bay Pines Center	117	40	\$294
Shawono Center	179	40	\$282

Table 3

Private Juvenile Justice Residential Foster Care Per Diem Rates Fiscal Year 2014-15		
Range of Per Diem Rates	Number of Facilities	Total Number of Licensed Beds
\$195-\$250	32	2,132
\$251-\$300	6	344
\$301-\$350	18	1,344

It is not known how many individuals who are currently placed in county jails who, under the bill, would no longer be allowed to be in the same facility as adults, but there is information available concerning those individuals under 18 who are supervised in MDOC facilities. As of August 2016, 57 individuals under 18 were held in an MDOC facility. The average per diem from the three types of facilities is approximately \$236 per diem. The maximum cost reduction from shifting the individuals out of MDOC custody would be approximately \$4,909,980 (57 prisoners at \$236 per diem). For a determination of the cost shift impact on the Department of Health and Human Services (DHHS) and local government, a blended weighted average per diem cost was used to attain an estimate. A \$265 per diem for a blend of the three types of facilities would cost \$5,513,325 for 57 responsible juveniles no longer held in an MDOC facility. This is an estimated increase of \$603,345 in total costs. However, under this scenario for 57 individuals, there would be a 50% share in costs for DHHS and local government. Both State and local government would be responsible for \$2,756,662 under current funding mechanisms. The State would save \$2,153,317. As this is just an estimate, if the per diem costs ended up higher than those in this scenario, any savings the State would be lessened until the per diem rate exceeded \$472, at which point there would be net increase in costs to the State. For local government, there would be an increased cost for any increase in the number of individuals supervised as court wards who would have otherwise been supervised in an MDOC facility. For instance, under the example described above, the increased cost to the counties for those 57 individuals would be \$2,756,662.

House Bill 4958

The bill 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 would likely 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 to the DHHS. For counties, there would no longer be an option of confining these individuals in the county jail, so there would 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 MDOC is paid by the City of Detroit to operate the Detroit Detention Center, which serves as the city's lock-up center. The Department also funds and operates the lock-up for the City of Flint. The provisions of 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 requirements of the bill.

House Bill 4959 (H-1)

The bill could have a negative fiscal impact on State and local government. It would bar the DHHS and local governments from transporting juvenile justice participants 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 current Department 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.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.