

Legislative Analysis



RAISE THE AGE: DETENTION OF JUVENILES

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House Bill 4140 (proposed substitute H-1)
Sponsor: Rep. Vanessa Guerra

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

House Bill 4143 (proposed substitute H-1)
Sponsor: Rep. Leslie Love

House Bill 4145 (proposed substitute H-1)
Rep. Graham Filler

Committee: Judiciary
Complete to 4-15-19

SUMMARY:

Generally speaking, House Bills 4140, 4143, and 4145 would amend various acts pertaining to confining juveniles in adult detention facilities or confining or holding juveniles in the same area or vehicle as adults to apply current practices to those under 18 years of age. A detailed description of each bill follows.

House Bill 4140 would amend the Juvenile Code within the Probate Code. Currently, in certain circumstances, juveniles under the age of 17 may be housed in a jail, prison, or other place of detention used to house adults as long as the juveniles are physically separated (out of sight and sound) from the adult offenders. The bill would revise numerous provisions within the Juvenile Code to apply current provisions pertaining to the detention or incarceration of juveniles with adults to 17-year-olds, as well.

Specifically, the bill would do all of the following (“court” means the Family Division of circuit court):

- Revise a provision allowing a child under 17 taken into custody for violating any law or ordinance, or a personal protection order (PPO), to be held, while awaiting the arrival of the child's parent or guardian, in any detention facility if completely isolated so as to prevent verbal, visual, or physical contact with any adult prisoner to apply also to a child under the age of 18.
- Allow a child at least 18 years of age (raised from at least 17) taken into custody for certain felony offenses to be detained in a cell or other secure area of a secure facility designed to incarcerate adults if the child is under the jurisdiction of the court under a supplemental petition for violating a PPO.
- Prohibit confining a juvenile under the age of 18 (raised from 17), who had been 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 court to commit a child not less than 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 a court 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.

- Delete two obsolete provisions pertaining to foster care home services.

Further, the Juvenile Code allows a court, under certain conditions, to order a child over whom the court has jurisdiction to be detained in a facility pending a hearing if a complaint has been made or a petition filed. If the child was taken into custody for certain status offenses (running away from home, disobedience, or truancy) or for escaping or attempting to escape from a medium- or high-security juvenile facility, the Code prohibits the child from being detained in a secure facility that restricts his or her movements and activities unless the child violated a court order and a finding was made that there was not a less restrictive alternative more appropriate to the child's needs. Currently, the Code does not apply the prohibition on placement in a secure facility for the listed status offenses to a child who is under the court's jurisdiction for violating a municipal ordinance or state or federal law, to certain juveniles charged with a specified juvenile violation, or to a *child not less than 17 years of age who is under the court's jurisdiction pursuant to a supplemental petition*. The bill would raise the age in the italicized text from not less than 17 years of age to not less than 18 years of age.

The bill is tie-barred to House Bills 4143 and 4145, which means that it cannot take effect unless both of those bills are also enacted.

MCL 712A.14 et al.

House Bill 4143 would amend 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.

The bill is tie-barred to House Bills 4140 and 4145, which means that it cannot take effect unless both of those bills are also enacted.

MCL 750.139

House Bill 4145 would amend section 27a of Chapter IV of the Code of Criminal Procedure. Currently, 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 would apply the provision to a juvenile or individual less than 18 years of age.

Currently, 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 would apply this provision to a juvenile or individual less than 18 years of age who is subject to confinement.

MCL 764.27a

BACKGROUND INFORMATION:

House Bills 4140, 4143, and 4145 are reintroductions of House Bills 4744, 4969, and 5637 of the 2017-18 legislative session and House Bills 4957, 4958, and 4959 of the 2015-16 legislative session. They are part of a larger bill package known as the “Raise the Age” legislation, which is intended to treat individuals who are 17 years of age as juveniles in criminal proceedings rather than automatically treating them as adults.

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 IMPACT:

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 million to \$61 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 package:

- 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.

House Bill 4140 would have a fiscal impact on the Department of Corrections only if offenders aged 17 and under were no longer sentenced to adult prison facilities. This could lead to a general fund/general purpose savings for the department over time, and would depend solely on judicial placement decisions. As of January 1, 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.

HB 4140 would result in a cost increase to local courts and local units of government 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

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>

facility, in most cases, the expenses for these placements and other juvenile justice services will be paid by the state and the county through the Child Care Fund.

House Bill 4143 would have a fiscal impact on local units of government. 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. Under the bill, 16- and 17-year-olds would be prohibited from being placed with adults 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, but local units would incur costs 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 through the Child Care Fund.

House Bill 4145 would have no fiscal impact on the Department of Corrections. 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 through the Child Care Fund.

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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.