

Legislative Analysis



DETENTION OF JUVENILES

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House Bill 4957, reported from committee as Substitute H-1

House Bill 4958, reported without amendment

House Bill 4959, reported as Substitute H-1

Sponsor: Rep. Kurt Heise

Committee: Criminal Justice

Complete to 4-26-16

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

SUMMARY:

House Bills 4957-4959 are tie-barred to each other and amend various acts to, in general, prohibit confining juveniles in adult detention facilities or confine or hold in the same area or vehicle as adults. The bills take effect 90 days after enactment. Other bills in the package include House Bills 4947-4956 and 4960-4966.

House Bill 4957 amends the Juvenile Code within the Probate Code (MCL 712A.14 et al.). 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 revises numerous provisions within the Juvenile Code to prohibit this practice and to apply the prohibition to juveniles under the age of 18.

Specifically, the bill would do the following:

- The bill would eliminate a provision allowing, while awaiting the arrival of the child's parent or guardian, a child under 17 taken into custody for violating any law or ordinance, or a PPO, to be held in a detention facility if completely isolated so as to prevent verbal, visual, or physical contact with any adult prisoners. Instead, the bill would prohibit a child under 18 taken into custody from being held in a jail or any other detention facility for adults but allow the child to be held in a detention facility for juveniles.
- The act currently prohibits a child taken into custody on a status offense (running away from home, truancy, disobedient to parents) to be detained in a cell or other secure area in any secure facility designed to incarcerate adults unless the child is under the jurisdiction of the Family Division for committing a felony or the child is *not less than 17 years of age* and is under a supplemental petition for violating a PPO.

The bill would delete the underlined provision and raise the age from *not less than 17 years of age* to *not less than 18 years of age* for a PPO violation.

- The bill eliminates a provision allowing a juvenile 15 years of age or older taken into custody to be detained in a jail or place of detention for adults (but separate from adults) if deemed a menace to other juveniles.
- The bill prohibits a juvenile under the age of 18 years (raised from under 17 years) who was taken into custody or detained to be confined in any police station, prison, jail, lock-up, or reformatory or transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons.
- The act currently allows a juvenile over 17 years of age within the Family Division's jurisdiction to be boarded in the county jail if in a room or ward separate and apart from adult criminals. The provision would be eliminated.
- The bill eliminates a provision allowing the Family Division to commit a child not less than 17 years of age to a county jail within the adult population for violating a PPO.
- If a juvenile under the jurisdiction of the Family Division is tried and convicted as an adult, the court may impose a juvenile disposition or, if determined to be in the best interest of the public, may impose any sentence that could be imposed upon an adult convicted of the same offense. The bill would specify that a juvenile could not be confined in a jail or prison until he or she is 18 years of age.
- Currently, if a juvenile placed on probation for an order of disposition that delays imposition of the sentence violates the probation, the Family Division may incarcerate the juvenile in the county jail for not more than 30 days; a juvenile under 17 years of age must be placed in a room or ward out of sight and sound from adult prisoners. The bill would eliminate this provision.
- Currently, if an order of disposition places a juvenile under state, county juvenile agency, or court supervision, the order must contain a provision for reimbursement by the juvenile, parent, or guardian to the court for the cost of care of service. If the juvenile is receiving an adoption support subsidy, the amount of the reimbursement cannot exceed the amount of the support subsidy. The bill would amend this provision to include redetermined adoption assistance provided under Public Act 308 of 2014.
- The bill deletes two obsolete provisions pertaining to foster care home services.

House Bill 4958 amends the Code of Criminal Procedure (MCL 764.27a). Section 27a allows a juvenile less than 17 years of age who is under the jurisdiction of the circuit court (adult criminal court) for committing a felony to be confined in the county jail pending trial, if the juvenile is held physically separate from adult prisoners and the county sheriff has given prior approval. Section 27a also allows a juvenile who is considered to be a menace to other children or who may not otherwise be safely detained to 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 these provisions.

Currently, upon a motion by a juvenile or individual less than 17 years of age who is subject to confinement in a county jail for committing a felony as described above, a court may order the juvenile or individual to be confined as otherwise allowed by law. Instead, the bill would apply this provision to a juvenile or individual less than 18 years of age who is subject to confinement.

House Bill 4959 amends the Michigan Penal Code to prohibit a child under 18 (raised from under 16) while under arrest, confinement, or conviction for a crime:

- 1) From being placed in any apartment or cell of a prison or place of confinement with adults who are under arrest, confinement, or conviction of a crime.
- 2) From being transported in a vehicle used to transport inmates with adults charged with or convicted of a crime. (MCL 750.139)

The bill also requires all cases in any court for a criminal offense involving the commitment or trial of children under 18 years of age (raised from under 16) to be held separate and apart from the trial of other criminal cases. Further, the bill deletes an obsolete provision pertaining to a youth correctional facility.

FISCAL IMPACT:

House Bill 4957

Corrections. As introduced, HB 4957 would have an indeterminate fiscal impact on the Department of Corrections. The bill would result in a savings for the department, over time, if offenders aged 17 and under were no longer sentenced, under any circumstances, to adult prison facilities. Currently, the department houses 83 prisoners aged 17 and under. If the department did not house any offenders until they reached the age of 18, the department could close about 80 beds, saving approximately \$1.8 million. If the department did not house any offenders that committed their offenses prior to the age of 18 until they reached the age of 21, the department could close about 380 beds over the next five years, saving approximately \$6.0 million.

Courts. HB 4957 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 and judicial discretion.

DHHS and Counties. HB 4957 would increase costs to the Department of Health and Human Services (DHHS) and to county governments. The bill's provisions that would no longer allow juveniles aged 17 and under to be held in detention facilities or county jails that also house adult offenders, and would prohibit the family courts from imposing a sentence involving jail or prison for 17 and under juveniles, would result in more juveniles being directed to detention or residential placement and services within the juvenile justice system than under current law. Placement of these juveniles would be decided by judicial

discretion and could include placement at County Juvenile Detention Facilities, as well as state and private Juvenile Justice Residential Facilities. When juveniles are placed at these types of facilities, in most cases, the county initially funds the expenditures and is reimbursed by the state's Child Care Fund for 50% of eligible costs.

The State of Michigan has established a state Child Care Fund (CCF) which is a fund that reimburses counties for programs that serve neglected, abused, and delinquent youth. Funding may be expended from the fund for out-of-home placements such as foster homes, institutional placements, or county-operated facilities, as well as for in-home services which provide families with the needed support to allow children to remain in their own homes. The CCF is appropriated in the DHHS budget and is used by the state to reimburse counties for 50% of the county's eligible CCF expenditures concerning the care and treatment for children who are court wards. In FY 2013-14, Michigan counties, in total, expended \$357,986,738 in CCF expenditures for all eligible CCF services and the state reimbursed the counties for 50% of those eligible costs.

The costs of residential placement of juveniles is assessed in per diem rates that are charged by each individual facility. While it is impossible to know which facilities might experience higher placements, the county per diem rates that are currently charged at the county juvenile detention facilities for the top five most populous counties in Michigan are presented in Table 1 below (Information was not available for Wayne County). The per diem rates of these facilities range between \$160 and \$180.

**Table 1. Per Diem Rates for County Juvenile Detention Facilities
(FY 2014-15)**

County	Per Diem Rate
Wayne	(not available)
Oakland	\$170
Macomb	\$170
Kent	\$180
Genesee	\$160

Currently, the state has two juvenile justice residential treatment facilities. A third, the W.J. Maxey Training School, was recently closed in October 2015. The per diem costs and bed capacity of the two remaining facilities can be found in Table 2 below:

**Table 2. Per Diem Rates for State
Juvenile Justice Residential Treatment Facilities
(FY 2014-15)**

Facility	Number Youth Served	Capacity Beds	Per Diem Costs
Shawono Center	120	40	\$293.78
Bay Pines Center	168	40	\$281.56

Private juvenile justice residential facilities also offer out-of-home services. According to DHHS, 48 offer statewide juvenile justice services for an established county per diem rate in FY 2013-14. In aggregate, these 48 facilities have 3,314 licensed beds. Table 3 below lists the number of these facilities that fall within the three per diem rate categories of between \$190 - \$200, \$200 - \$300, and \$300 - \$335:

Table 3. County Per Diem Rates for Statewide Residential Foster Care Juvenile Justice Facilities (FY 2013-14)

County Per Diem Rate	Number of Facilities
\$190.00 - \$200.00	22
\$200.00 - \$300.00	9
\$300.00 - \$335.00	17
TOTAL	48

HB 4957 would increase costs to DHHS and county governments by an unknown amount. Any increase in costs would depend upon how many additional juveniles would now be placed into juvenile justice facilities instead of jails and prisons under current law and, through judicial discretion, what types of facilities and services might be ordered by the court. For residential treatment, Tables 1 – 3 above reveal that costs charged by facilities can range between \$190 to \$335 per day. Expenses for these placements and other juvenile justice services will generally be paid by the state and the county in equal amounts.

House Bill 4958

As introduced, HB 4958 would have no fiscal impact on the state Department of Corrections, but would impact the City of Detroit. Currently, the department 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. Under the bill, offenders less than 18 years of age, who are picked up and detained by the city pending arraignment, could no longer be confined at the detention center. The City of Detroit would be responsible for detaining these individuals in a way which meets the requirements of the bill.

HB 4958 could increase costs to DHHS and to county governments by an unknown amount. The bill eliminates current language that allows a juvenile who is considered a menace to other children to be placed in a jail if out of sight and sound from adults. Where these juveniles would now be placed under the bill's provisions would be dependent upon the judge's discretion. The elimination of this provision may result in additional juveniles being directed to the juvenile justice system for detention than would be under current law.

Any increase in costs to DHHS and county governments would depend upon how many additional juveniles would now be placed in the juvenile justice system for detention, what services might be ordered by the court, and the amount of support the state and counties were already obligated to expend for the care of these individuals.

House Bill 4959

As introduced, HB 4959 would have no fiscal impact on the state Department of Corrections because provisions of the bill, as written, reflect current department policy. 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 also be prohibited from being placed with adults under arrest, confinement, or conviction. Also, local units could incur costs for complying with provisions in the bill related to transporting 16- and 17-year-olds.

BACKGROUND INFORMATION:

The juvenile court process is quite different from the process that is 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 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: Certain, 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 for an adult and a guilty plea or verdict results in a criminal conviction. However, the court retains discretion to order 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.)

BRIEF DISCUSSION OF THE ISSUES:

Studies show that juveniles in adult prison and jails are more likely to experience assaults, harm themselves (including higher suicide rates), or act out and be placed in isolation. For example, in 2005 and 2006, about one percent of all jail inmates nationally were 17 years of age or younger, yet they accounted for 21 percent and 13 percent of the victims of sexual assaults by other inmates; moreover, 16- and 17-year-olds in adult jails and prisons tend to suffer multiple assaults. (Information taken from the website of Campaign for Youth Justice)

The bills address the issue by amending a number of statutes to prohibit the comingling of juveniles and adults in various settings, including in vans transporting inmates to and from court. Such provisions comply with PREA, the federal Prison Rape Elimination Act, which prohibits youth from placement in a housing unit where contact will occur with adult inmates in a common space, shower area, or sleeping quarters. PREA also requires that in other settings, juveniles 17 and under must be prevented from seeing or communicating with adult inmates (or direct staff supervision must be provided when the two are together, e.g. during meal times when adult inmates are staffing serving lines).

However, House Bill 4959 does remove a current prohibition on youths and adult prisoners remaining in a courtroom at the same time during the trial of an adult. Depending on the nature of the trial (e.g., the adult and youth are co-defendants or one is testifying against the other), and the structure of a courthouse, it is not always feasible to maintain such separation.

POSITIONS:

The following entities expressed *support* for the bills:

Michigan Council on Crime and Delinquency
Michigan Catholic Conference
Michigan United
Governors' Committee on Juvenile Justice
Hope Network
Michigan Legislative Black Caucus
Family Advisory Board, Family Participation Program
First Unitarian Universalist Church of Ann Arbor
Coalition Against Mass Incarceration
Michigan's Children
Michigan Probate Judges Association (in concept)
National Association of Social Workers-MI
Citizens Alliance on Prisons & Public Spending (CAPPS)
A.R.R.O. (Advocacy, Reentry, Resources, & Outreach)
Criminal Defense Attorneys of Michigan (in concept)
Citizens for Prison Reform
American Friends Service Committee
ACLU of Michigan (in concept)
Highfields, Inc. (HB 4957-4958)
Unitarian Universalist Church of Lansing (HB 4957-4958)
M.A.D.E. *institute* (HB 4957-4958)

The Michigan Department of Corrections is *neutral* on the bills.

The following entities expressed *opposition* to the bills:

Michigan Association of Counties

Ottawa County
Livingston County
Wayne County
Prosecuting Attorney Association of Michigan

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko
Viola Bay Wild

■ 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.