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Senate Bill 84 (Substitute S-1 as reported)  
Senate Bill 90 (Substitute S-1 as reported)  
Senate Bill 91 (Substitute S-1 as reported)  
Senate Bill 94 (Substitute S-1 as reported)  
Senate Bills 96 through 99 (Substitute S-1 as reported)  
Sponsor: Senator Curtis S. VanderWall (S.B. 84)  
Senator Peter J. Lucido (S.B. 90)  
Senator Michael D. MacDonald (S.B. 91)  
Senator Jeff Irwin (S.B. 94)  
Senator Adam Hollier (S.B. 96)  
Senator Curtis Hertel, Jr (S.B. 97)  
Senator Marshall Bullock II (S.B. 98)  
Senator Ruth Johnson (S.B. 99)  
Committee: Judiciary and Public Safety

### **CONTENT**

Senate Bill 84 (S-1) would amend the Michigan Indigent Defense Commission Act to revise the definition of "adult".

Senate Bills 90 (S-1) would amend the juvenile code to revise the definition of "adult" to refer to 18, instead of 17, years of age.

Senate Bill 91 (S-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.

Senate Bill 94 (S-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.

Senate Bill 96 (S-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.

Senate Bill 97 (S-1) would amend the juvenile code to do the following:

- 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.
- Delete 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.

- Delete a provision allowing the incarceration of a juvenile for up to 30 days for a probation violation.

Senate Bill 98 (S-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.

Senate Bill 99 (S-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.

Senate Bills 96 (S-1) and 97 (S-1) are tie-barred to each other, and both bills are tie-barred to Senate Bill 91. Senate Bill 99 (S-1) is tie-barred to Senate Bills 84, 90, 91, 94, and 98. The bills would take effect on October 1, 2021.

MCL 780.983 (S.B. 84)  
712A.1 (S.B. 90)  
764.27a (S.B. 91)  
330.2060a (S.B. 94)  
750.139 (S.B. 96)  
712A.14 et al. (S.B. 97)  
764.27 (S.B. 98)  
764.15b (S.B. 99)

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

Senate Bill 84 (S-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.

Senate Bills 90 (S-1) and 98 (S-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 the State Court Administrative Office 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.

Senate Bill 91 (S-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 (DHHS). 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 (MDOC) 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.

Senate Bill 94 (S-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.

Senate Bill 96 (S-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 General Fund/General Purpose (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, it could close half of one housing unit that housed this population, saving just under \$2.0 million GF/GP.

Senate Bill 97 (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 were 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 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 have been 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.

Senate Bill 99 (S-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.

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