

Legislative Analysis



INCREASE CHILD CARE FUND REIMBURSEMENT AND REQUIRE JUVENILE ASSESSMENTS OR SCREENINGS

Senate Bill 418 (S-2) as passed by the Senate
Sponsor: Sen. Sylvia A. Santana

Senate Bill 421 (S-1) as passed by the Senate
Sponsor: Rep. Penelope Tsernoglou

House Committee: Criminal Justice
Senate Committee: Civil Rights, Judiciary, and Public Safety
Complete to 10-13-23

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

SUMMARY:

Senate Bill 418 would increase the reimbursement formula for the Child Care Fund administered by the Department of Health and Human Services (DHHS). Counties receiving reimbursement would have to adopt validated assessment or screening tools to guide diversion, disposition, and detention decisions. Senate Bill 421, which cannot take effect unless Senate Bill 418 is enacted, would require a risk and needs assessment to be conducted on a juvenile, and the results to be considered by the court, before disposition.

The Senate bills are largely identical to House Bills 4624 and 4627, respectively, and are related to House Bills 4628 and 4629. All four House bills have been reported from committee. House Bills 4628 and 4629 are now on Third Reading. As currently substituted, they too cannot take effect unless Senate Bill 418 is enacted. They are described in “Background,” below.

Senate Bill 418 would amend the Social Welfare Act to increase the reimbursement formula for the Child Care Fund, require and allow certain uses of money from the fund, and require certain performance measures.

Generally speaking, under the Social Welfare Act, the state and counties share the cost of juvenile justice services in a 50/50 state-local cost-sharing model. For the cases in which the county is the first payer, the state is required to reimburse counties for 50% of eligible expenses from county child care funds for the costs of juvenile justice services.¹ The state makes these reimbursements from the state Child Care Fund, which is a fund appropriated in the DHHS budget from which the state reimburses counties for 50% of eligible expenditures concerning the care and treatment for children who are court wards.²

The fund reimburses counties for programs that serve neglected, abused, and delinquent youth, and funding may be expended for out-of-home placements such as foster homes or county-operated facilities. Expenditures may also be made for in-home services which allow children

¹ In addition, since October 1, 2021, the state has reimbursed 100% of the cost of juvenile justice services for juveniles under the jurisdiction of the court who were 17 years old at the time of the offense. This was enacted in 2019 as part of a group of bills (known as the “Raise the Age” legislation) that amended several state laws to treat individuals who are 17 years of age as juveniles in criminal proceedings rather than automatically treating them as adults. See <https://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4133-67514053.pdf>

² <https://www.michigan.gov/mdhhs/doing-business/child-care-fund>

to remain in their own homes, and may include job training skills, intensive probation, community wraparound services, mentoring, family counseling, electronic tethers, alternatives to detention, and other community-based services.

State share

The bill would increase the general state reimbursement share from 50% to 75% for in-home expenses including community-based supervision, services, and relate practices, and per diem rates for the use of respite care and shelter for less than 30 days. The state share would remain at 50% for residential services of detention and long-term residential placements. From funds received under these provisions, counties could use juvenile client management software to allow for statewide juvenile justice data aggregation, analysis, and reporting.

In addition, beginning October 1, 2024, the state would no longer pay 100% of the cost of juvenile justice services for juveniles under the jurisdiction of the court who were 17 years old at the time of the offense. The bill also would eliminate a funding formula, based on actual expenditures for 17-year-old juveniles, that is currently set to take effect October 1, 2025.

County requirements

Counties would be required to do all of the following from funds received from the Child Care Fund as state reimbursement for juvenile justice services:

- Adopt a validated risk assessment tool to use before disposition.
- Adopt a validated risk screening tool to guide diversion and consent calendar decisions.
- Adopt a detention screening tool to inform the use of secure detention.
- Utilize research-based juvenile-specific probation standards as developed and approved by the State Court Administrative Office (SCAO).
- Employ a local quality assurance specialist to support the county with implementing research-based practices, excluding counties or tribes receiving the basic grant as described in section 117e of the act.

DHHS would have to develop and issue rules, policies, and practices to implement the above requirements and to oversee compliance with these requirements by counties and tribes.

DHHS, in consultation with SCAO, also would have to establish performance measures for evaluating county adherence to the above requirements and for evaluating the goals of the Child Care Fund more generally. Beginning October 1, 2025, DHHS would have to prepare and submit an annual report to the legislature on yearly Child Care Fund juvenile justice expenditures and related performance measures.

Additional use of funds

Finally, the bill would provide that the Child Care Fund may be used for programs and practices starting when a complaint, referral, or petition is generated by the local prosecutor, law enforcement, or authorized school personnel for a youth at risk of juvenile court involvement through residential placement and reentry excluding general prevention services for all youth at risk of juvenile justice system involvement. DHHS would have to align Child Care Fund policies, budget requirements, and oversight practices to support those goals and to ensure the appropriate use of funding.

Other amendments

The act would amend the definition of in-home care to specify that it includes services and items *provided in the home or in the community* to be an alternative to out-of-home care or to provide an early return home for a child placed out of their home.

The bill would take effect October 1, 2024.

MCL 400.117a

Senate Bill 421 would amend the juvenile code (Chapter XIIA of the Probate Code) to require a designated individual or agency to conduct a risk and needs assessment for each juvenile before disposition. The assessment would have to be research-based and nationally validated for use with juveniles and would have to comply with guidelines developed by SCAO under the bill. The individual or agency designated to conduct assessments would have to be trained on the applicable assessment's appropriate use.

The results of the assessment, together with a dispositional recommendation made by the individual or agency that performed it, would have to be shared with the court and each party to the proceeding, including the juvenile, their counsel, and the prosecuting attorney. The results of the assessment would have to be used to inform a dispositional recommendation and to determine the most appropriate disposition for the juvenile considering all of the following factors:

- The least restrictive setting possible.
- Public safety.
- Victim interests.
- Rehabilitation of the juvenile.
- Improved juvenile outcomes, including educational advancement.

The court would have to consider the results of the assessment when making a dispositional decision regarding a juvenile under the juvenile code, including whether to place a juvenile under supervision (including the supervision length, level, and conditions), whether to place a juvenile on probation, and whether to place a juvenile in out-of-home care.

For the duration of each order of disposition for a juvenile, the court would have to require a new risk and needs assessment for the juvenile if any of the following apply:

- Six months have passed since the juvenile's last risk and needs assessment.
- The juvenile experiences a major life event.
- There is a major change in the juvenile's proceedings.

A risk and needs assessment conducted as described above, and any information obtained from a minor in the course of the assessment (including any admission, confession, or incriminating evidence), would not be admissible in evidence in any adjudicatory hearing in which the minor is accused and would not be subject to subpoena or any other court process for use in any other proceeding or for any other purpose.

SCAO, under the supervision and direction of the supreme court, would have to create guidelines on the use of risk and needs assessments under the bill.

The bill would take effect October 1, 2024.

MCL 712A.18

BACKGROUND:

The Michigan Task Force on Juvenile Justice Reform was created by Executive Order 2021-6 as a bipartisan advisory body in the Department of Health and Human Services (DHHS).³ It issued its final report on July 18, 2022.⁴ The task force was asked to “lead a data-driven analysis of [Michigan’s] juvenile justice system and recommend proven practices and strategies for reform grounded in data, research, and fundamental constitutional principles.” In particular, in the words of its final report,⁵ the task force was “charged with developing recommendations to improve state law, policy, and appropriations guided by the following objectives:

- Safely reduce placement in detention and residential placement and associated costs.
- Increase the safety and well-being of youth impacted by the juvenile justice system.
- Reduce racial and ethnic disparities among youth impacted by the juvenile justice system.
- Improve the efficiency and effectiveness of the state’s and counties’ juvenile justice systems.
- Increase accountability and transparency within the juvenile justice system.
- Better align practices with research and constitutional mandates.”

The bills would implement, in part, the following unanimous task force recommendation, as quoted from its final report:

Enhance the Child Care Fund (CCF) to focus on establishing a minimum framework of juvenile justice best practices statewide. These best practices will be supported by an increase in the community-based services/supervision reimbursement rate for counties and tribes in order to incentivize and support the development, expansion, and strengthening of community-based services and formal alternatives to detention and incarceration. [...]

a. Increase the state reimbursement rate from 50 percent to 75 percent for community-based supervision and services (including respite/shelter). Maintain the 50 percent state reimbursement rate for residential services (detention and post-disposition longer term residential placements).

b. This increased rate would also incorporate costs related to Raise the Age (transitioning in the final year of the current Raise the Age funding model) such that the CCF becomes an integrated source of funding for Raise the Age and CCF funding.

c. As part of the increased reimbursement rate for community-based services, require local courts to 1) adopt a validated risk screening tool to guide diversion decisions 2) adopt a validated risk assessment tool for use prior to disposition 3) adopt a detention screening tool 4) adhere to best practice probation standards, including officers being certified in these standards every two years 5) employ a local quality assurance specialist to support the above practices (excluding counties/tribes that receive the basic grant) and 6) form cross-

³ <https://www.legislature.mi.gov/documents/2021-2022/executiveorder/pdf/2021-EO-06.pdf>

⁴ <https://www.michigan.gov/whitmer/news/press-releases/2022/07/18/task-force-on-juvenile-justice-reform-approves-blueprint-for-transforming-juvenile-justice>

⁵ <https://micounties.org/wp-content/uploads/Michigan-Taskforce-on-Juvenile-Justice-Reform-Final-Report.pdf>

systems youth service committees at the local/regional level to promote collaboration and resource efficiencies.

d. Expand use of the CCF so that local courts and tribes can use funding as they see fit for prearrest diversion through reentry, eliminate “intensive” requirements so counties can match supervision/services to youth’s risk level, and streamline administrative requirements.

e. Create a statewide CCF advisory committee composed of juvenile justice association members, local court/county representatives, prosecutor and defense attorney representatives, tribal representatives, MDHHS, advocates, and impacted populations, to support evidence-based practice implementation and statewide capacity building.

House Bill 4628 would amend the juvenile code to provide that a juvenile case cannot be placed on the consent calendar⁶ unless the court considers the results of a risk screening tool and mental health screening tool conducted on the juvenile by a designated individual or agency trained in those screening tools. The screening tools would have to be research-based and nationally validated for use with juveniles and would have to comply with guidelines developed by SCAO. Results of a risk screening tool and mental health screening tool would be part of the juvenile’s consent calendar case records and subject to provisions in the juvenile code regarding access to those records.

A risk screening tool and mental health screening tool conducted as described above, and any information obtained from a minor in the court of those screenings or provided by the juvenile in order to participate in a consent calendar case plan (including any admission, confession, or incriminating evidence), would not be admissible in evidence in any adjudicatory hearing in which the minor is accused and would not be subject to subpoena or any other court process for use in any other proceeding or for any other purpose.

SCAO, under the supervision and direction of the supreme court, would have to create guidelines on the use of risk screening tools and mental health screening tools under the bill.

The bill also would prohibit the court from considering restitution when determining whether a case should be placed on the consent calendar.

The bill would take effect October 1, 2024.

MCL 712A.2f

House Bill 4629 would amend the juvenile code to provide that an individual or agency designated by the court must use a detention screening tool on a juvenile before the juvenile may be detained in a secure facility pending hearing. Before detaining a juvenile, the court would have to consult the results of the detention screening tool and follow any supreme court rules regarding its use. The court would have to share the results of the detention screening tool with all parties before a juvenile’s detention hearing. Any statement, admission, confession, or incriminating evidence obtained from a juvenile in the court of a screening under these

⁶ The consent calendar is an informal docket of cases the court has determined should not proceed on the formal calendar but that the protective and supportive action by the court will serve the best interests of the juvenile and the public. Under both current law and the bill, a case cannot be placed on the consent calendar unless the prosecutor, the juvenile, and the parent, guardian, or legal custodian must agree to have the case placed on the consent calendar.

provisions would be not admissible as evident in an adjudicatory hearing in which the juvenile is accused, would not be subject to subpoena, and could not be used in any other court proceeding or for any other purpose.

SCAO, under the supervision and direction of the supreme court and in collaboration with local courts, would have to determine the appropriate detention screening tool.

The bill would take effect October 1, 2024.

MCL 712A.15 and 712A.16

FISCAL IMPACT:

Senate Bill 418 would increase state costs for the Department of Health and Human Services by a net of approximately \$16.0 million once the bill is fully implemented and reduce county costs by a net of approximately \$13.0 to \$10.0 million once the bill is fully implemented. The table below itemizes the three primary changes with fiscal impacts:

	State Cost	County Cost
In-home enhanced state reimbursement at 75%	\$31.0 million	(\$31.0 million)
Removing enhanced state reimbursement for 17-year-olds, starting in FY 2024-25	(\$15.0 million)	\$15.0 million
County Quality Assurance Specialist and Screening tools and state oversight	Minimal, up to \$300,000	\$3.0 million to \$6.0 million, for counties or tribes that do not receive a basis grant
Total Cost/(Savings)	\$16.0 million	(\$13.0 million) to (\$10.0 million)

Senate Bill 421 would increase costs for the Department of Health and Human Services and local units of government by an indeterminant amount. The fiscal impact of the bill would be dependent on the cost of placement for juvenile delinquents and children affected by abuse and neglect. The department is responsible for 50% of the cost of out-of-home placement of juvenile delinquents. Placements may be affected as a result of the use of a new risk and needs assessment implementation.

Senate Bill 421, considered together with House Bills 4628 and 4629 (see “Background,” above), would have no additional fiscal impact on the state or on local units of government. The FY 2022-23 supplemental budget for Judiciary, Article 16 of 2023 PA 119, included an appropriation of \$500,000 and authorization for 6.5 FTE positions. The FY 2023-24 budget for Judiciary, Article 8 of 2023 PA 119, included an appropriation of \$2.0 million and authorization for 13.0 FTE positions. The funding and FTE positions will be used to establish the Juvenile Justice Division within SCAO. The division will coordinate implementation of risk/needs and detention screening and assessment tools. Several tools exist currently, but not all courts use the same tools. Under the bills, courts would have flexibility in the tools they select to use, but tools would have to meet minimum standards and courts would have to follow

guidelines for how to use the tools. Guidelines will be established through the Juvenile Justice Division within SCAO.

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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.