



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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**Bill Number:** S. 0053 Introduced on January 12, 2021  
**Author:** Malloy  
**Subject:** South Carolina Juvenile Justice Reform Act  
**Requestor:** Senate Judiciary  
**RFA Analyst(s):** Gardner, Boggs, Wren, and Tipton  
**Impact Date:** March 29, 2022

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### **Fiscal Impact Summary**

This bill amends provisions related generally to the needs and services of children in the custody of the Department of Juvenile Justice (DJJ) or a local institutional facility.

Most agencies' fiscal impact analysis of this bill is based on previous correspondence on similar legislation, S. 1018 of 2020. The Revenue and Fiscal Affairs Office (RFA) has contacted each agency to request an updated response. This fiscal impact statement will be updated as needed, if additional or updated information becomes available.

Judicial indicates this bill will have an undetermined General Fund expenditure impact as the bill creates new programs, creates new offenses, and establishes new requirements that affect the family court. There is no data with which to estimate the impact on family court caseloads.

The Commission on Prosecution Coordination (PCC) indicates the bill will result in a significant but undetermined increase in its General Fund expenditures due to the increased responsibilities and new programs created by this bill.

The Commission on Indigent Defense (CID) indicates this bill will result in an expenditure increase totaling \$2,737,400 for 36.0 FTEs to manage the provisions of the bill beginning in FY 2022-23.

The Department of Public Safety (DPS) estimates a recurring expenditure impact of \$85,184 in General Funds and \$2,200 in nonrecurring General Funds for computer equipment. The department will hire 1.0 FTE to facilitate the development of community-based services for children.

The Department of Children's Advocacy indicates that the creation of the Children's Bill of Rights and the establishment of new reporting requirements will result in a recurring expenditure impact of \$136,734 beginning in FY 2022-23 and a nonrecurring expenditure impact of \$1,000 for FY 2022-23 only.

This bill will have no expenditure impact on the State Department of Education (SCDE), the Department of Mental Health (DMH), and the Department of Disabilities and Special Needs (DDSN), as each agency can manage any additional responsibilities of this bill within existing appropriations.

This bill will have no expenditure impact on the institutions of higher learning (IHLs) since the IHLs indicate that the additional expenditures for staff time and record storage can be managed by the institutions.

The expenditure impact of this bill on DJJ and the Attorney General is pending, contingent upon responses from the agencies.

The bill is expected to have an undetermined impact on Other Funds fine and fee revenue due to changes in hearings and procedures for juveniles. The overall impact is undetermined as data are unavailable to estimate the changes.

The overall expenditure impact of this bill on local school districts is undetermined and will vary by district. SCDE surveyed the regular school districts on similar legislation and received responses from twenty-one school districts. Seventeen of the responding districts indicated no expenditure impact. Responses from the remaining four districts varied widely for training, policy development, reporting, records retention needs, and additional staff to manage the provisions of the bill. Therefore, the expenditure impact of this bill on local school districts will depend upon the number of students impacted by a given school district.

## **Explanation of Fiscal Impact**

### **Introduced on January 12, 2021**

#### **State Expenditure**

This bill amends provisions related generally to the needs and services of children in the custody of DJJ or a local institutional facility.

**Department of Juvenile Justice.** The bill makes significant changes to sentencing and procedures for juveniles. This bill modifies and adds to the responsibilities of DJJ. The impact of these changes is pending, contingent upon a response from the agency.

**Judicial.** This bill creates the South Carolina Juvenile Justice Reform Act, which, among other things, ensures children who are considered for, referred to, or incarcerated by the state's juvenile justice system are afforded additional protections and rights. The following is based on a previous response from Judicial on similar legislation. Judicial noted that certain elements of this bill will reduce the number of juvenile cases while others may increase the number of cases.

Elements of the bill which may result in a reduction in the number of cases heard by the family court include:

- the establishment of a juvenile offender civil citation program, pre-detention intervention programs, Juvenile Drug Courts, and Juvenile Mental Health Courts;
- the requirement that juveniles who have committed certain status offenses must be referred to a diversion program;
- the establishment of certain other limits on juvenile referrals;

- the requirement that minor offenses committed by a child in the custody of the Department of Juvenile Justice should, when feasible, be resolved in an administrative manner;
- the establishment of time limits for probation;
- the elimination of general sessions court waivers for fourteen- and fifteen-year-olds for certain offenses; and
- the declaration that the family court's determination as to transfer to general sessions court is a final order, which may be appealed directly to the Supreme Court and must be heard within 120 days.

Elements of the bill which may result in an increase in the number of cases heard by the family court and could potentially create a backlog include:

- the establishment of new factors and procedures for a juvenile being added to and later removed from the Juvenile Sex Offender Registry;
- the option to allow electronic monitoring of juveniles;
- the requirement that law enforcement arrange for a child to consult with legal counsel before any custodial interrogation and the requirement that the court consider this factor for determining admissibility;
- the addition of a procedure for an ex parte order from the family court for releasing a juvenile from custody when an officer does not consent;
- the requirement that child over sixteen who is still in custody must have a hearing before a magistrate within 24 hours; and
- the addition of both factors to consider and limits on pretrial detention.

Elements of the bill which will have an unknown impact on the family courts include:

- the creation of the new offense of student threats; and
- the ability of the family court to order that a proceeding be adjourned in contemplation of dismissal.

As the bill creates new programs, creates new offenses, and establishes new requirements that affect the family courts, there is no data with which to estimate the impact on family court caseloads. However, Judicial indicates any expenditure impact of this bill can be managed within existing appropriations, and therefore, will have no expenditure impact for Judicial.

**Attorney General.** The expenditure impact of this bill is pending, contingent upon a response from the agency.

**Commission on Prosecution Coordination.** Based on a previous response on similar legislation, PCC anticipates this bill will result in an undetermined increase for the agency, depending upon the increased magnitude of work for solicitors' offices.

Section 3 of this bill requires all solicitors to have a civil citation program for juvenile offenders. PCC anticipates this will have a significant expenditure impact for additional FTEs, training, and supplies. However, as this is an entirely new program, PCC is unable to estimate how many FTEs may be needed.

Sections 7 and 11 of this bill modify the sex offender registry status for juveniles, including when a person may petition for removal from the registry and extension of the family court's jurisdiction to review certain petitions. These sections also require solicitors or the Attorney General file any notice of opposition to a petition for removal. PCC indicates this will result in moderate expenditure increase to file the notice of opposition for removal from the registry.

Section 25 requires that for a child seventeen or older who is taken into custody and not released to a parent or other responsible adult, there must be a hearing within twenty-four hours from the time of being taken into custody. PCC anticipates this provision will result in a significant expenditure impact to provide services for around-the-clock hearings.

Section 28 requires solicitors to provide justification to override the newly created presumption that the juvenile should first be sent to a diversion program. PCC anticipates this will increase expenditures to manage the additional workload created by this section.

Section 33 increases the age of when a juvenile may be tried as an adult from fourteen to fifteen or sixteen, depending upon the charges. The family court order to try the juvenile as an adult and to transfer the case to circuit court may be appealed directly to the Supreme Court. PCC anticipates that for each new case that is appealed directly to the Supreme Court, there will be a significant increase in expenditures. However, the overall expenditure impact depends on the increased number of cases that are transferred to circuit court and appealed to the Supreme Court.

Section 35 allows solicitors to operate treatment courts if authorized by the Supreme Court. As many circuits already have treatment courts and the participation is voluntary in nature, PCC anticipates any increased expenditures due to this section can be managed within existing appropriations.

Section 38 shifts the responsibility to request to family court for a review of a disposed case to determine whether further supervision is needed from the juvenile parole board to the juvenile, solicitor, or DJJ. PCC anticipates this section will increase expenditures in order to manage the additional responsibility to monitor cases to determine if and when to file for a review.

**Commission on Indigent Defense.** Based on a previous response on similar legislation, the agency estimates that Sections 28, 29, and 30 will require sixteen new educational attorneys and sixteen new social workers, with one attorney and one social worker assigned to each of the sixteen Circuit Public Defenders Offices. The average salary and fringe for the new attorneys will be \$79,200 per lawyer. The social workers salary and fringe will be \$75,200 for each position. This will result in 32.0 FTEs and a cost of \$2,467,400 annually. These positions will handle the new DJJ truancy and other placement cases that are brought about each year. Section 38, dealing with the issue of post disposition review hearings, would result in 4.0 FTEs and \$270,000 annually for four contract attorneys, one to cover the Upstate counties, two to cover the Midlands counties, and one to cover the Low Country counties. The total increase in recurring expenditures is estimated to be \$2,737,400 beginning in FY 2022-23.

**Department of Public Safety.** Section 24 of this bill creates the Juvenile Justice Improvement Fund and allows DJJ to contract with other agencies to establish and maintain a continuum of community-based services for children and families. DPS anticipates it will work with DJJ to administer the newly created fund and the community-based programs. Based on this assumption, the department anticipates hiring a Program Coordinator II. This new FTE will result in a recurring General Fund expenditure impact of \$85,184 for salary, fringe, and office supplies beginning in FY 2022-23. The department will also incur \$2,200 in nonrecurring General Funds for computer equipment in FY 2022-23. Therefore, this bill will result in 1.0 FTE and an increase in General Fund expenditures of \$87,384 in FY 2022-23 and \$85,184 each year thereafter.

**Department of Children's Advocacy.** Section 15 establishes a Children's Bill of Rights, which enables a child who believes his rights have been violated to redress his grievance through the Department of Children's Advocacy. Section 21 prohibits children from being held in solitary confinement and establishes restrictions for when a child may be held in corrective room restriction. Each county, municipal, regional, and state institutional facility that detains or rehabilitates children is required to submit a monthly report attesting to the number of children who were subjected to corrective room restriction during that month and the length of time that child was in corrective room restriction to the Department of Children's Advocacy. In any instance when a child is subjected to corrective room restriction for longer than seventy-two consecutive hours, the facility must report the reason(s) the child was not successfully returned to the general population. The department anticipates this monthly report will require identification of all facilities subject to this requirement and development of processes for providing information to the agency. The department also anticipates the need to create processes for receipt, review, investigation, data entry, reporting, and analysis.

Based on a previous response on similar legislation, the department anticipates it will need 2.0 FTEs, Program Coordinator IIs, at \$59,259 each, including both salary and fringe. Also, the department anticipates operating costs will be \$18,216 for rent, computers and IT, travel expenses, phones, and general office supplies and postage. Further, the department anticipates a nonrecurring General Fund expenditure increase of \$1,000 for miscellaneous expenses from the initial office setup. Therefore, this bill will increase General Fund expenditures by \$137,734 in FY 2022-23 and \$136,734 each year thereafter for the Department of Children's Advocacy.

**State Department of Education.** SCDE previously indicated on similar legislation that the bill would have no expenditure impact since the agency could manage the provisions of the bill within existing appropriations.

**Commission on Higher Education and State Board for Technical and Comprehensive Education.** CHE previously surveyed the state's public IHLs to determine the expenditure impact of similar legislation. In the fall of 2018, enrollees under the age of eighteen comprised one-half of one percent of all enrollment in the state's public IHLs. Therefore, this bill will affect a very small population of the state's public institutions. Several IHLs indicated that the additional expenditures for staff time and record storage could be managed by the institution. Therefore, the implementation of the bill is not expected to increase General Fund expenditures for IHLs.

**Department of Mental Health.** The family court may, on its own behalf, order an evaluation for a determination of serious mental illness or intellectual disability. Based on DMH's previous response on similar legislation, the department does not anticipate this provision will change the number of children diverted to the agency. Therefore, the bill will have no expenditure impact on DMH.

**Department of Disabilities and Special Needs.** The family court may, on its own behalf, order an evaluation for a determination of serious mental illness or intellectual disability. Based on DDSN's previous response on similar legislation, the agency anticipates being able to manage any additional or modified responsibilities within existing appropriations. Therefore, the bill will have no expenditure impact for DDSN.

### **State Revenue**

This bill, in sections 44 and 45, prohibits administrative expungement fees for the expungement of certain status offenses and non-violent crimes. The current fee is \$250. This bill will result in a loss of Other Funds revenue of \$250 for each administrative expungement fee not collected. The number of cases where the fee will not be collected is unknown, therefore the revenue reduction is undetermined. The bill will have an additional undetermined impact on Other Funds fine and fee revenue due to changes in hearings and procedures for prosecution of juveniles.

### **Local Expenditure**

SCDE previously surveyed the regular school districts regarding the expenditure impact of similar legislation and received responses from twenty-one school districts. Seventeen of the responding districts indicated that the bill would have no expenditure impact. Responses from the remaining four districts varied widely for training, policy development, reporting, and records retention needs. Therefore, the expenditure impact of this bill on local school districts is undetermined and will depend upon the number of students impacted by a given school district.

### **Local Revenue**

N/A



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Frank A. Rainwater, Executive Director