



**House
Legislative
Analysis
Section**

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**JUVENILE DETENTION
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**Senate Bill 223 (Substitute H-2)
First Analysis (6-4-87)**

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**Sponsor: Sen. Phil Arthurs
Senate Committee: Criminal Justice, Urban Affairs,
and Economic Development
House Committee: Judiciary**

S.B. 223 (6-4-87)

THE APPARENT PROBLEM:

Minors who come under the authority of the juvenile division of the probate court fall into three general categories: 1) minors under the jurisdiction of the probate court for protective purposes, as in cases of child neglect, abuse, or an unfit home; 2) status offenders, who may be detained for behavior for which they could not legally be detained if they were adults, such as truancy, incorrigibility, or running away from home; and 3) juvenile offenders, or delinquents, who fall under the court's jurisdiction for committing crimes. (The juvenile offender status of minors over 15 years old may be waived, allowing them to be tried and sentenced as adults.)

The Juvenile Code says that minors may not be detained in a police station, prison, jail, lock-up, or reformatory, although children 15 years old or older whose "habits or conduct are deemed such as to constitute a menace to other children, or who may not otherwise be safely detained" may be placed by court order in a room or ward separate from adults in such a facility. The prohibition on detaining minors with adult offenders reportedly has existed since 1897, and in recent history has been amplified by a Department of Corrections administrative rule which requires that 16- and 17-year-olds held in jails not only be separated from adult offenders but be entirely out of sight and sound of them. Testimony before House and Senate committees, however, indicated that jails generally are unable to consistently comply with this standard. Further, the Michigan Sheriffs' Association has stated that even those jails which are able to meet this standard generally lack the staff and programs necessary to respond to what they see as the unique needs of minors.

Studies indicate not only that exposing minors to adult offenders in jail can have harmful effects on the minors, but also that minors who are in custody for their own protection or for status offenses ought not to be detained with juvenile offenders. It appears that detaining status offenders and minors in need of protection with juvenile offenders makes them vulnerable to physical and emotional abuse, exposes them to values which can lead them to become juvenile offenders themselves, and deprives them at a critical point of an environment in which their problems can be treated.

Finally, the state stands to lose federal funds under the Juvenile Justice and Delinquency Prevention Act (JJDP), which is up for reauthorization this year, if it fails to ban juvenile jailing by December, 1989.

THE CONTENT OF THE BILL:

The bill would amend the Juvenile Code to prohibit detention of abused and neglected children in secure facilities designed to physically restrict the movements of alleged or adjudicated juvenile offenders, or in secure areas of secure facilities designed to incarcerate adults.

A status offender who had not committed a felony could not be jailed in an adult cell. A status offender could not be placed in secure juvenile detention unless he or she had wilfully violated a court order and the court found after a hearing and on the record that there was not a less restrictive alternative more appropriate for the child.

In addition, detention pending hearing is at present limited to children whose home conditions make immediate removal necessary, whose offenses are so serious that they endanger public safety, or who are detained for observation and treatment. The bill would state that these are the circumstances under which children may be taken into custody, rather than placed in detention. It would delete children detained for observation and treatment from the list, and add children who have a record of unexcused failures to appear at juvenile court proceedings, and those who have failed to remain in a detention or nonsecure facility or placement in violation of a court order.

The bill would provide that the state would reimburse local units of government for any new or increased costs required by the bill.

MCL 712A.15 and 712A.16

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted a substitute which differs from the Senate-passed version in that it does not contain Senate floor amendments that would have allowed a status offender taken into custody to choose secure juvenile detention or placement in a jail cell away from incarcerated adults, and that would have allowed the juvenile court in a county that did not have a nonsecure juvenile facility to place in a jail cell a status offender who presented a clear danger to himself, herself, or others.

FISCAL IMPLICATIONS:

Fiscal information is not available. (6-3-87)

ARGUMENTS:

For:

The bill would help keep children who are already in a vulnerable position out of a potentially harmful environment. Studies repeatedly have shown that jails are no place for children. According to the University of Illinois Community Research Center, the suicide rate of minors in adult jails is five times that of juveniles in the general population. Michigan law has long acknowledged the danger of jailing minors by restricting the conditions under which they may be jailed, but these restrictions are not enough. Most jails cannot guarantee that the minors will be out of the sight and sound of adult offenders and thus protected from abuse and criminal influence. In those jails

where complete separation can be achieved, a minor may be isolated and become suicidally depressed. Despite good intentions, overburdened jail staff lack the training and resources to meet the unique needs of minors who are being detained. While the bill would help many children avoid the dangers and stigma of jail, it would not impair the ability to provide secure detention, such as in a drug treatment facility, for children in need of special treatment.

For:

Michigan's jails do not have enough room for serious adult criminals, let alone status offenders. In a recent survey of county sheriffs in the state, it was found that overcrowding is a problem in more than half of our jails, and 75 percent of the sheriffs expect this situation to worsen. Detention of juveniles is one of the factors contributing to the crisis. Because juveniles who are held in jail must be segregated from the adult population by sight and sound, a sheriff could have to empty an entire wing of cells in order to detain one child.

Against:

Rural counties should be exempted from the proposed prohibition against placing status offenders in jails. While it may make sense to keep these juveniles out of urban jails under all circumstances, this requirement would be neither appropriate nor necessary in the case of rural areas that have no separate secure detention facility for juveniles. For some of these counties, the closest facility of that type is hundreds of miles away. It simply would not be rational or in the best interests of the juveniles to send them far away from their own communities to a facility where they would be mixing with much more dangerous youths, and where the staff was neither familiar with nor prepared to deal with the individual cases. The bill should at least allow the court in a county that lacked a juvenile facility to use existing jail space to temporarily house a juvenile who was presenting a clear danger to himself or herself, as long as the juvenile was kept separate from incarcerated adults. Moreover, it should allow a status offender who preferred secure detention to opt for it.

Response: While some rural counties may be able to provide proper care to detained status offenders, unfortunately that is not necessarily true throughout the state. Incidents in other states have demonstrated the potential for such hazards as beatings and suicide to juveniles who are placed in inappropriate facilities. It would be naive to believe that such tragedies could not happen here. Even if a county's arrangement to house juveniles in the jail does not create a situation that is directly dangerous, proximity to adult criminals is still inevitable and juveniles are unavoidably isolated and subject to sensory deprivation, which is a major cause of jailhouse suicide. In addition, an exception for rural counties could threaten the state's eligibility for federal funding since states receiving JJDP funds must have a complete ban on juvenile jailing by the end of 1989. Finally, liability exposure for counties is increased when juveniles are housed in jails; it is too difficult for counties to meet requirements for sight and sound separation and to take other protective measures necessary to ensure that no harm comes to a juvenile.

Against:

Some believe that jailing, if done under appropriate constraints, can have a sobering effect on an unruly juvenile and serve to deter him or her from more serious criminal involvement.

Against:

The bill should be limited to permit the detention of status offenders in a secure facility for the violation of only those court orders that dealt with placement, not for violation of any court order. Otherwise, a juvenile could be securely detained for violating a court order that, say, prohibited the juvenile from associating with a particular person, or required him or her to earn a certain grade in school.

Response: A status offender could be detained in a secure facility for violation of a court order only if a less restrictive alternative were not available. This provision would be in keeping with the federal statute, and it would grant judges the discretion necessary to handle individual cases.

POSITIONS:

The Coalition for Juvenile Justice Reform strongly supports the bill. (6-2-87)

The Department of Social Services supports the bill. (6-3-87)

The Michigan Association of Counties supports the bill. (6-2-87)

The Michigan Council on Crime and Delinquency strongly supports the bill. (6-2-87)

The Michigan Federation of Private Child and Family Agencies supports the House substitute. (6-2-87)

The Michigan Network of Runaway and Youth Services supports the bill. (6-2-87)

The Michigan Sheriffs' Association supports the bill. (6-2-87)

The Office of Criminal Justice, Department of Management and Budget, supports the House substitute. (6-2-87)

The Probate Judges Association has no position at this time. (6-2-87)