House
Legislative
Analysis
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House Bill 4730 with committee amendments
Sponsor: Rep. William Van Regenmorter

House Bill 4731 with committee amendments
Sponsor: Rep. Virgil Smith, Jr.

House Bill 4732 (Substitute H-1)
Sponsor: Rep. Bill Martin

House Bill 4733 with committee amendments
Sponsor: Rep. David Honigman

House Bill 4741 (Substitute H-2)
Sponsor: Rep. Burton Leland

House Bill 4744 with committee amendments
Sponsor: Rep. David M. Gubow

House Bill 4748 (Substitute H-2)
Sponsor: Rep. Michael J. Bennane

House Bill 4749 (Substitute H-2)
Sponsor: Rep. Nick Ciaramitaro

House Bill 4750 (Substitute H-2)
Sponsor: Rep. Tecla P. Hunter

House Bill 4752 with committee amendment
Sponsor: Rep. Debbie Stabenow

House Bill 4767 as introduced
Sponsor: Rep. Lynn Jondahl

Committee: Judiciary

First Analysis (6-17-87)

THE APPARENT PROBLEM:

Police, prosecutors, case workers, and the courts report that while juvenile crime may be down overall, the numbers of hardened juvenile offenders appear to be higher than ever. One way for society to deal with serious juvenile offenders is to have them tried and sentenced as adults. The juvenile code provides for this by authorizing the juvenile court to, upon the motion of the prosecuting attorney, waive to criminal court a juvenile at least 15 years old for whom there was probable cause to believe that he or she had committed an offense which if committed by an adult would be a felony. In deciding whether to waive a juvenile to adult court, the court must determine whether the best interests of the child and the public would be served by granting the waiver of jurisdiction.

In making that determination, the court must consider various criteria, among them the relative suitability of programs and facilities available to the juvenile and criminal courts, and whether the offense is part of a pattern that would lead to a determination that the juvenile may be beyond rehabilitation by the juvenile system. The meaning of the criterion regarding relative suitability of programs has figured in waiver appeals. The other criterion presents problems because of the difficulty in determining that an individual is beyond rehabilitation. Both of these criteria have been refined by the Supreme Court, but apparently continue to create impediments to waiver, according to testimony before the House Ad-Hoc Special Committee on Youthful Offenders, and the House Judiciary Subcommittee on Juvenile Justice.

Criticisms of waiver procedures are not confined to matters of criteria interpretation, however. Many believe that certain violent offenders should automatically be tried and sentenced as adults. Adult sentencing can provide for longer incarceration and treatment of a violent criminal the juvenile system must release at age 19. Automatic waiver to the adult criminal justice system would induce juveniles to take the consequences of their actions more seriously, for all too many know the limitations of the juvenile system and work those limitations to their advantage. The need to deal with such hardened young criminals is perceived to be the greatest in Wayne County, where juvenile crime is the highest, but the percentage of waiver petitions granted is, incongruously, substantially lower (half or less) than elsewhere in the state.

Others maintain that automatic trial and sentencing as adults is a simplistic solution to a complex problem. Although the adult system provides for better due process of law, automatic waiver for certain offenses would fail to accomodate mitigating circumstances and could lead to a salvageable young person being imprisoned for life. Further, reports are that prison overcrowding has led some judges to sentence juveniles to probation or to shorter terms than might be expected. A more sensible way to adjudicate delinquents, it is argued, would be to automatically try certain violent offenders as adults, but allow the criminal court to place them in the juvenile system following trial, if that was the best way to deal with the individual. That way, the decision on placement would follow a thorough fact-finding process.

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It has been proposed that such a structure be adopted, coupled with a revising of the waiver criteria that would continue to apply to other offenders, and an extension of jurisdiction to age 21 for serious offenders who entered the criminal justice system as juveniles. However, these proposals alone would ignore another criticism levied against the juvenile justice system: that relinquishing to the Department of Social Services authority over delinquents committed to state institutions fragments the juvenile justice system and complicates efforts to deal effectively and consistently with delinquent youth. State facilities are overcrowded, and sometimes the department releases delinquent youth to their parents because of lack of space. It has been suggested that in addition to the above proposals, the state ensure that the approval of the adjudicating court be obtained before a delinquent can be released from state placement.

THE CONTENT OF THE BILLS:

The bills constitute a package that would give the adult criminal court original jurisdiction over juveniles charged with certain serious felonies, authorize the criminal court to place a juvenile in a juvenile facility following trial, revise the criteria that the juvenile court applies in making a decision to waive a juvenile to criminal court (this would apply in cases other than those where original jurisdiction was given to the criminal court), and extend the age of continuing jurisdiction for the juvenile court from age 19 to age 21 for youths who had committed certain offenses. Each bill in the package is tie-barred to every other bill in the package.

House Bill 4730

House Bill 4730 would amend the juvenile code to revise the criteria that the court must consider in deciding whether to waive to criminal court a juvenile charged with what would be a felony if committed by an adult. Those criteria are at present (1) the prior record and character of the child; (2) the seriousness of the offense; (3) whether the offense, even if less serious, is part of a repetitive pattern indicating that the child may be beyond rehabilitation under existing juvenile programs and statutory procedures; (4) the relative suitability of programs and facilities available to the juvenile and the adult criminal courts; and (5) whether it is in the best interests of the public welfare and the protection of the public security that the child stand trial as an adult offender.

The bill would retain the first, second and fifth criteria and replace the others with the following:

- whether the offense was part of a repetitive pattern that would lead to a determination that the child was not amenable to treatment or that despite the child's potential for treatment, the nature of the child's delinquent behavior was likely to disrupt the rehabilitation of other children in the treatment program;
- whether, despite the child's potential for treatment, the nature of the child's delinquent behavior was likely to render the child dangerous to the public if released at the age of 19 or 21; and,
- whether the child was more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile ones.

In addition, the bill would require the court to put a denial of a waiver motion in writing and include the reasons for denial (this requirement at present applies only when a waiver motion is granted).

MCL 712A.4

House Bill 4741

The bill would amend the juvenile code to remove the juvenile court's original jurisdiction over juveniles 15 years of age or older who were charged with any of the following: assault with intent to murder; assault with intent to rob, armed; attempted murder; first degree murder; second degree murder; first degree criminal sexual conduct; armed robbery; and manufacture, delivery, or possession of more than 650 grams of cocaine or a schedule 1 or 2 narcotic. If it operated a detention home or other facility for delinquents, the juvenile court would place a juvenile charged with one of the listed crimes at that facility if ordered to do so by the adult criminal court.

MCL 712A.2

House Bill 4748

The bill would amend the Code of Criminal Procedure to accomodate the adjudication and disposition of seriously delinquent juveniles charged with one of the crimes for which adult trial is to be mandated. Before trial, it would be prohibited to detain a juvenile with adults, under language paralleling that which exists in the juvenile code for juvenile detention. Time served in a juvenile facility would be applied to any sentence imposed following trial.

At the conclusion of the preliminary examination, a juvenile's case would be transferred to the juvenile court if the magistrate found that none of the listed violations occurred or that there was not probable cause to believe that the juvenile committed the violation, but that there was probable cause to believe that the juvenile had committed some other offense.

At sentencing, the court would determine whether the best interests of the juvenile and the public would be served by committing the juvenile to a juvenile facility or by imposing any other sentence provided by law for an adult offender. In making the determination, the court would employ criteria virtually identical to those to be used by the juvenile court when deciding whether to waive a juvenile to adult court. The Department of Social Services, or the juvenile facility if the delinquent had been detained in a juvenile facility pending trial, would prepare the equivalent of a presentence investigation report for use by the court; this report would be in addition to the presentence investigation report prepared by the Department of Corrections for all felony convictions.

The court would retain jurisdiction over a juvenile committed to a juvenile facility, and would annually review that juvenile's placement and progress, using an annual report to be prepared by the facility under the Juvenile Facilities Act to be created by House Bill 4767. The court could order changes in placement or the treatment plan based on the review.

As near as possible to the juvenile's nineteenth birthday, the court would conduct a review hearing to determine whether the juvenile had been rehabilitated and whether the juvenile presented a serious risk to public safety. If the juvenile had not been rehabilitated or presented a serious risk to public safety, the court's jurisdiction would continue. In making the determination, the court would consider: the juvenile's participation in education, counseling and work programs; the juvenile's willingness to accept responsibility for prior behavior; the juvenile's behavior in the current placement; the prior record and character of the juvenile and his or her physical and mental maturity; the juvenile's potential for violent conduct as demonstrated by prior behavior; the recommendations of the juvenile facility; and other information submitted by the prosecutor or the

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juvenile. The juvenile facility could at any time petition for a review hearing if it believed that a juvenile under the bill had been rehabilitated and did not present a serious risk to the public. The bill would include provisions for timely notice of hearing to prosecutors, juveniles, and parents, and for appointment of counsel.

MCL 761.1 et al.

House Bill 4750
The juvenile court's jurisdiction generally ends at age seventeen. However, when the court has exercised its jurisdiction, it may retain it until the youth turns 19. The bill would allow the court to retain jurisdiction to age 21 for delinquents who committed any of the following: arson of a dwelling; assault with intent to do great bodily harm less than murder; assault with intent to rob, unarmed; kidnapping; second or third degree criminal sexual conduct; attempt to commit criminal sexual conduct; and unarmed robbery.

The juvenile court would retain jurisdiction over juveniles who had committed felonies and were committed to a juvenile facility, irrespective of whether the facility was a state facility (at present, commitment to a state facility puts the juvenile under the jurisdiction of the Department of Social Services). As of three years after the bill took effect, the court would retain jurisdiction over all adjudicated delinquents. The court would annually review the juvenile's placement and progress, and could order changes in the juvenile's placement or treatment plan. A juvenile could be released only with the approval of the court.

Generally, a delinquent committed to a state facility would continue to be released automatically at age 19. However, for those juveniles who had committed offenses for which the court could retain jurisdiction until age 21, the court would conduct a review hearing as close as possible to the juvenile's nineteenth birthday. If the court determined that the juvenile had not been rehabilitated or presented a serious risk to public safety (the same determinations which the criminal court would make with regard to juveniles under its jurisdiction), the court would continue its jurisdiction over the juvenile. In making its determinations, the court would consider the same factors weighed by the criminal court under House Bill 4748. Provisions for notice, appointment of counsel, and commitment reports would parallel those in House Bill 4748.

MCL 712A.2a

House Bill 4731
The bill would amend Public Act 369 of 1919 to give the Detroit Recorder's Court original and exclusive jurisdiction over the offenses listed by House Bill 4741, if committed by a juvenile between 15 and 17 years old.

MCL 725.10a

House Bill 4732
The bill would amend the Social Welfare Act to include the criminal court and juveniles tried in criminal court in provisions for the regional facilities plan; to include services provided to juveniles under criminal court jurisdiction within the defintion of "juvenile services" for which the state juvenile justice funding system, including the child care fund, may be used; and to exclude from the authority of the Youth Parole and Review Board youths adjudicated in juvenile court for felonies and youths tried in criminal court.

MCL 400.115 et al.

House Bill 4733
The bill would amend the Revised Judicature Act to give the circuit court original and exclusive jurisdiction over the offenses listed by House Bill 4741 if committed by a juvenile between 15 and 17 years old.

MCL 600.606

House Bill 4744
The bill would amend Public Act 84 of 1949 to extend to juveniles committed by criminal court provisions for transfer of juveniles between state institutions or agencies under the Departments of Mental Health, Corrections, or Social Services.

MCL 720.601

House Bill 4749
The bill would amend the Youth Rehabilitation Services Act to include delinquents committed by the criminal court within the definition of "state ward" and to specifically authorize the Department of Social Services (DSS) to contract with the juvenile court for the care and rehabilitation of state wards. A delinquent that the juvenile court committed to the DSS for an offense that constituted a felony could not be released from institutional placement without the court's approval. A delinquent committed by the criminal court could not be released without that court's approval. As of three years after the bill's effective date, no delinquent committed by the juvenile court could be released without that court's approval. The approval of the Youth Parole and Review Board would not be necessary for the delinquents who had committed felonies or who had been sent from the criminal court, and three years after the bill's effective date would no longer be necessary for other delinquents. Automatic discharge from state wardship, which at present happens at age 19 for all, would not happen until age 21 for youths who had been committed for crimes for which the criminal court had original jurisdiction or for which House Bill 4750 extended the age of continuing jurisdiction.

MCL 803.302

House Bill 4752
The bill would amend Public Act 214 of 1963 to permit regional detention facilities to accept juveniles detained by the criminal court.

MCL 720.651

House Bill 4767
The bill would create the Juvenile Facilities Act to provide for the preparation of reports required by other bills in the package and to authorize a juvenile facility to petition the court for a review hearing to release a juvenile. A "juvenile facility" would be a county facility, an institution operated as an agency of the county or the juvenile court, or a state institution or agency described in the Youth Rehabilitation Services Act to which a delinquent had been committed. Various reports would be prepared by the facility or the Department of Social Services.

FISCAL IMPLICATIONS:

Fiscal information is not available. (6-16-87)

ARGUMENTS:

For:

The package offers a reasonable solution to the problem of how to effectively deal with violent and hardened juvenile criminals without sacrificing the opportunity to rehabilitate salvageable delinquents within the juvenile justice system. The public would be protected without the law becoming overly rigid. Juveniles accused of particularly violent crimes would automatically be tried as adults, but could be placed in the juvenile system, rather

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than sent to adult prison, if that was the appropriate thing to do. Serious juvenile offenders would no longer automatically be released from the juvenile system at age 19, but rather could be kept for further confinement and treatment until age 21, if the public safety would be threatened by the juvenile's release. Juveniles could not be discharged from institutions without the approval of the adjudicating court, thus protecting the public from the premature release of dangerous juveniles from an overcrowded system, and providing for better continuity in the treatment of delinquents. The criteria for standard waiver from the juvenile to the criminal court would be refined along the lines elucidated by the Supreme Court and made more explicit, which should resolve any lingering problems of interpretation.

Against:

The bills leave unresolved issues of funding, of finding adequate facilities to house and treat delinquents, of the propriety of allowing the criminal court to order a juvenile placed in a facility under the authority of the juvenile court, and of fragmentation and availability of services. They make no special provision for repeat offenders or serious crimes against property such as breaking and entering of a dwelling, which can all too easily end in violence. Their potential effect is uncertain, in part because their very scope is predicated on a matter of prosecutorial discretion: the charge that a juvenile faces. Further, the bills ignore a problem cited by the Coleman Commission on Permanency Planning with regard to abused and neglected children: that of the conflict of interest presented when the service provider is also the service evaluator.

POSITIONS:

The Michigan Council on Crime and Delinquency supports the package. (6-16-87)

The Department of Social Services supports the bills, with its support being predicated on a longer range goal of clarifying, through legislation, the judicial and executive roles in the provision of juvenile justice services, and on deterring juvenile crime. (6-17-87)

The Michigan Judges' Association is still examining the bills and has no formal position at this time. (6-15-87)

The Probate Judges' Association has not yet evaluated the bills and has no formal position at this time. (6-15-87)