



**House
Legislative
Analysis
Section**

Washington Square Building Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

DELINQUENTS: JURISDICTION

House Bill 5203 with committee amendments
Sponsor: Rep. John G. Strand
Committee: Judiciary

Senate Bill 137 with committee amendments
Sponsor: Sen. John F. Kelly
Senate Committee: Judiciary
House Committee: Judiciary

RECEIVED

FEB 08 1988

First Analysis (12-16-87)

Mich. State Law Lib. by

H.B. 5203 & S.B. 137 (12-16-87)

THE APPARENT PROBLEM:

Last June, the House passed a package of House Bills dealing with juvenile offenders. In general, that package would give the adult criminal court jurisdiction over juveniles charged with serious felonies, authorize the criminal court to place a juvenile with the Department of Social Services 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. (See Background Information.)

The legislature now has before it a roughly equivalent package of bills, (some Senate Bills, some House Bills) most of which are in the Senate Judiciary committee. House Bill 5203 and Senate Bill 137 are elements in that package.

THE CONTENT OF THE BILLS:

House Bill 5203 is analogous to House Bill 4730, which the House passed in June. Like House Bill 4730, the bill 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.

Like House Bill 4730, 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.

As would House Bill 4730, 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).

Unlike House Bill 4730, the bill would allow the probable cause hearing held in juvenile court prior to waiver to criminal court to be substituted for the preliminary examination in criminal court. Thus, the probable cause hearing would determine not only whether there was probable cause to believe that a felony offense had been committed, but also whether there was probable cause to believe that the juvenile committed the offense. Before a juvenile could waive this probable cause hearing, the court would have to inform him or her that that action would constitute a waiver of the preliminary examination that otherwise would be required under the Code of Criminal Procedure.

MCL 712A.4

Senate Bill 137 would amend the Code of Criminal Procedure to make it consistent with House Bill 5203.

MCL 766.4

The bills are tie-barred to each other and to the following bills: House Bills 4731, 4733, 4741, 4748, and 4750, and Senate Bills 601, 604, 605, 607, 608, and 609.

HOUSE COMMITTEE ACTION:

The House Judiciary Committee added tie-bar amendments to both bills.

BACKGROUND INFORMATION:

The following discussion of juvenile justice issues is taken from the problem statement in the House Legislative Analysis Section's analysis of House Bill 4730 et al., as passed by the House.

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.

OVER

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 may provide for better due process of law, automatic waiver for certain offenses would fail to accommodate mitigating circumstances and could lead to a salvageable young person being imprisoned for life. Further, reports are that prison overcrowding has led some criminal court 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.

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 (DSS) 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.

FISCAL IMPLICATIONS:

The House Fiscal Agency estimated the cost of last June's House-passed juvenile jurisdiction package (House Bill 4730, et al.) to be as follows. Because of the likelihood that additional costs to local units of government would be considered newly-mandated state costs under Article 9,

Section 29 of the constitution, all costs are assumed to be state costs. It is also assumed that there would be a total of 15 new 64-bed regional training schools under the authority of the DSS, and one new facility under the Department of Corrections. The estimates assume that nine DSS facilities and the corrections facility will be brought into operation in the first year of implementation, and that the remaining facilities will be operating by the second year.

First Year:	Operating	\$32.650 million
	Capital Outlay	<u>43.540</u>
	TOTAL	\$76.190 million
Second Year:	Operating	\$57.910 million
	Capital Outlay	<u>25.000</u>
	TOTAL	\$82.910 million

Third and Subsequent Years: Operating costs of \$57.910 million annually.

The House Fiscal Agency notes that if fewer, but larger, facilities are built, the costs to the state would be less. (8-20-87)

ARGUMENTS:

For:

The bills are important elements in a package that offers a reasonable solution to the problem of how to effectively deal with violent and hardened juvenile offenders without sacrificing the opportunity to rehabilitate salvageable delinquents within the juvenile justice system. House Bill 5203 in particular would make the criteria for standard waiver from the juvenile to the criminal court more explicit and refine them along the lines elucidated by the Supreme Court; this should resolve any lingering problems of interpretation.

POSITIONS:

The Department of Social Services supports both bills. (12-15-87)

The Prosecuting Attorneys Association of Michigan supports both bills. (12-15-87)

The Michigan Council on Crime and Delinquency supports House Bill 5203 and does not oppose Senate Bill 137. (12-15-87)