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Senate Bill 136 (Substitute S-2 as passed by the Senate)
Senate Bill 137 (as passed by the Senate)
Senate Bill 138 (Substitute S-2 as passed by the Senate)
Sponsor: Senator John F. Kelly (Senate Bills 136 and 137)
Senator Rudy J. Nichols (Senate Bill 138)
Committee: Judiciary
Date Completed: 7-14-87

RATIONALE

Under the juvenile code, when a minor aged 15 or older is accused of an act that would constitute a felony if committed by an adult, the probate court may waive jurisdiction to a court of general criminal jurisdiction so that the minor can be prosecuted as an adult. Under this system, after the probate court has found probable cause to believe that the juvenile committed the offense, the prosecutor must convince the court that waiver would be in the best interests of the juvenile and the public. Many people feel that the waiver hearing is unnecessary when a juvenile is accused of committing a particularly serious offense, such as murder or rape, and that in this type of case the discretion over waiver should be removed from the probate court. In Wayne County, for example, of the 148 waiver petitions filed in 1984, only 25 were granted, leaving the disposition of 123 presumably dangerous youths to the limited resources of the juvenile court system. At the heart of many people's concerns is the fact that, if waiver is either not sought or not granted, the probate court's jurisdiction over the juvenile ends when he or she reaches the age of 19. At that time, a juvenile who has been confined must be released, no matter how serious the juvenile's offense, or how extensive the juvenile's criminal history. It is therefore believed by some that waiver of jurisdiction should be mandated in those cases in which juveniles aged 15 or older are accused of certain serious felonies.

CONTENT

Senate Bill 136 (S-2) would amend the juvenile code to mandate the waiver of jurisdiction from the probate court to a court of general criminal jurisdiction of juveniles aged 15 or older who were accused of certain serious felonies and who had previous adjudications, unless it were shown by a preponderance of the evidence that jurisdiction should not be waived. Waiver would be automatic, however, upon the prosecutor's motion, for certain offenses against a person, including first degree murder, kidnapping, and armed robbery.

Senate Bill 137 would amend the Code of Criminal Procedure to make it consistent with Senate Bill 136.

Senate Bill 138 (S-2) would amend the Department of Corrections Act to require that a juvenile under 17 who was convicted of a felony and sentenced to a term of confinement be placed in a separate juvenile facility until he or she turned 19, and then transferred to a correctional facility for the remainder of the term.

All of the bills are tie-barred.

Senate Bill 136 (S-2)

Waiver: Previous Adjudications

The bill would require the probate court to waive jurisdiction to a court of general criminal jurisdiction if 1) the court found probable cause; 2) the juvenile were 15 years of age or older; 3) the court determined that it could not be shown by a preponderance of the evidence that the court should not waive jurisdiction; and 4) either a) the juvenile had been previously adjudicated for three or more offenses that would be felonies if committed by an adult, or b) both of the following applied:

- The juvenile was currently charged with an offense that, if committed by an adult, would be arson of a dwelling house; criminal sexual conduct in the second or third degree; assault with intent to do great bodily harm or to commit criminal sexual conduct; unarmed assault with intent to rob and steal; unarmed robbery; breaking and entering with intent to commit larceny or any felony; or an attempt to commit one of those offenses; and
- The juvenile had been previously adjudicated for one of the above offenses or for first or second degree murder; kidnapping; attempted murder; armed robbery with assault; armed assault with intent to rob; assault with intent to commit murder; criminal sexual conduct in the first degree; or an attempt to commit one of those offenses.

In determining whether to waive jurisdiction, the court would have to consider the following:

- The juvenile's prior record, character, physical and mental maturity, and pattern of living.
- The seriousness of the offense.
- Whether the offense was not part of a repetitive pattern of offenses and it appeared that the juvenile was not beyond rehabilitation, notwithstanding the seriousness of the offense.
- The relative suitability for the juvenile of programs and facilities available to the juvenile courts and the courts of general criminal jurisdiction.
- Whether, if the juvenile were not waived, the protection and welfare of the public would be put at risk.

Automatic Waiver

The court would be required to waive jurisdiction (without the findings discussed above) upon the motion of the prosecuting attorney, if the juvenile were accused of an offense that, if committed by an adult, would be one of the following or an attempt to commit one of the following:

S.B. 136, 137 & 138 (7-14-87)

- First or second degree murder.
- Attempted murder.
- Assault with intent to commit murder.
- Kidnapping.
- First degree criminal sexual conduct.
- Armed robbery with assault.
- Armed assault with intent to rob.

Procedure

The bill provides that for all waivers the juvenile would have to be arraigned on an information (a formal written accusation) filed by the prosecuting attorney in the court of general criminal jurisdiction, and that the probable cause hearing required for waiver of jurisdiction would replace the preliminary examination required under the Code of Criminal Procedure.

MCL 712A.4 et al.

Senate Bill 137

The Code of Criminal Procedure requires the magistrate before whom a person accused of a felony is brought to schedule and hold a preliminary examination (a hearing at which the court determines whether there is sufficient evidence to continue proceedings leading to a trial and at which the prosecutor must show that a crime was committed and that there is probable cause to believe the accused committed it). The bill would make an exception to this requirement for the provision in Senate Bill 136 under which a probable cause hearing on waiver of jurisdiction would replace the preliminary examination.

MCL 766.4

Senate Bill 138 (S-2)

If a juvenile under the age of 17, after waiver to a court of general criminal jurisdiction, were convicted of a felony and sentenced to a term of years in confinement, the juvenile would have to be committed to the Department of Corrections for placement in a separate facility for juveniles until he or she reached the age of 19. At that time, the juvenile would have to be transferred by the Department for placement in a correctional facility for the remainder of the term.

Proposed MCL 791.233c

FISCAL IMPACT

Senate Bill 136 (S-2)

Senate Bill 136 would result in an expenditure increase for the State. The amount would depend on the number of juveniles waived to courts of general criminal jurisdiction and the amount of time juveniles were under the jurisdiction of the Department of Corrections. (See analysis of S.B. 138 for cost implications to the Department of Corrections.)

The provision in the bill that would replace the preliminary examination with the probable cause hearing would result in an administrative savings for local courts.

Senate Bill 137

The bill would have no fiscal impact on State or local government. Senate Bill 138 (S-2) The bill would have an indeterminate fiscal impact on State expenditures in FY 1986-87 for a number of reasons.

The factors contributing to the indeterminate impact at this time include:

- Estimation of the number of juveniles over whom the probate court would waive jurisdiction to a court of general criminal jurisdiction to be prosecuted as adults.
- Estimation of the security classification level for those individuals who would be waived to the Department of Corrections for serving their sentence. Individuals

sentenced for serious felony offenses such as murder, sexual assault and aggravated assault would require a higher level of security (close and maximum), while persons sentenced for less serious offenses could be housed in minimum or medium security housing within the Department of Corrections. The classification levels of these prisoners would impact the annual cost of housing. The annual housing cost for FY 1986-87 ranges from \$12,000 for minimum security housing, up to \$22,000 for close/maximum security housing. During FY 1986-87, the average cost of housing a prisoner in the Corrections system is \$19,700.

- Availability of secure beds within the Department of Corrections to accommodate the convicted juveniles during this period of severe overcrowding of adult prisoners. Such availability would be very doubtful without construction of new facilities. The Department of Corrections currently utilizes the following facilities for youthful offenders:

Minimum Security: Cassiday Lake Technical School

Medium Security: Michigan Training Unit

Close Security: Michigan Reformatory

In the event that these facilities could not accommodate the additional offenders because of being at or above rated capacity, the Department of Corrections would have to submit a capital outlay request for construction of additional secure facilities. The cost of a 612 bed multi-security level regional prison is \$40-\$42 million during FY 1986-87.

ARGUMENTS

Supporting Argument

The bills would provide a reasonable and practical alternative to the present system of waiving jurisdiction over juvenile offenders. The propriety of prosecuting a juvenile in the adult system is self-evident in those cases in which the juvenile has committed one of the serious felonies for which Senate Bill 136 (S-2) proposes to mandate waiver. In such a case, the requirement of going through the usual waiver hearing should be eliminated. The bills would retain the present policy that a person's life should not be ruined for an offense committed as a minor, while sending the clear message that an individual will not escape justice by being underage.

Horror stories are now heard about juveniles who have committed vicious crimes but remain in the juvenile system and are released by the age of 19, if they are committed at all. While these cases may be the exception, a mechanism is needed to ensure that such a juvenile does not slip through the cracks of the system due to a prosecutor's oversight or a judge's leniency, or for any other reason. By providing that mechanism, the bill would help protect the residents of this State.

Supporting Argument

Senate Bill 136 (S-2) would codify a recommendation of the Probate Court Task Force supervised by Michigan Supreme Court Chief Justice Comstock Riley and made up of probate court judges and administrators and other experts in the field of juvenile justice. In its April 1987 report, the task force recommended that, in cases in which a juvenile aged 15 or 16 has committed a violent crime, and after the prosecutor has established probable cause, the affected juvenile should "have the burden of proving by a preponderance of the evidence that there is a high probability of his or her rehabilitation within the juvenile justice system and that continuation of the juvenile within that system is in the best interests of society". By requiring the waiver of juveniles who have committed certain violent felonies or repeatedly committed felony offenses, unless it

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were shown by a preponderance of the evidence that jurisdiction should not be waived, the bill would shift the burden of proof to the accused. The task force also recommended that, in all other cases in which a prosecutor petitions for waiver, the burden should remain with the prosecutor to prove that waiver is in the best interests of the juvenile and society. The bill would retain this provision (except in cases for which waiver would be automatic upon the prosecutor's motion).

Supporting Argument

These proposals are a responsible answer to the public outcry for safer streets and communities. According to Wayne County juvenile court statistics, a total of 5,096 delinquency petitions were filed in the county in 1984. Those petitions included (with more than one charge on a petition when two or more offenses arose out of the same incident): 45 homicide charges, 176 first degree criminal sexual conduct charges, 39 second degree criminal sexual conduct charges, 529 robbery charges, 779 burglary charges, 1,064 assault charges, and 39 arson charges. The number of waiver petitions brought, however, was only 148, and the total granted a paltry 25. Clearly, probate court discretion over waiver should be limited in these types of cases, and the juveniles involved must be removed from a system that cannot deal effectively with them in the two or three years it normally retains jurisdiction.

Supporting Argument

By replacing the preliminary examination in general criminal court with the probable cause hearing in juvenile court for juveniles who have been waived, Senate Bills 136 (S-2) and 137 would remove unnecessary duplication within the system. Since both proceedings determine the same issues — whether an offense was committed and whether there is probable cause to believe the defendant committed it — there is no logical reason to conduct both. According to the State Supreme Court, a preliminary exam must nevertheless be held because the right to one has been granted in statute, although there is no constitutional right to a preliminary examination (*People v Dunigan*, 409 Mich 765 (1980)). The bills thus would create a statutory exception to the preliminary exam requirement in the case of probable cause waiver hearings.

Opposing Argument

Michigan already has a workable procedure for waiver of juvenile offenders when appropriate. Unlike the proposed mandatory waiver, the current system allows for the exercise of judicial discretion in every case and requires the consideration of specific factors related to each individual juvenile. Waiver is now granted only through an adversarial process in which both the juvenile and the public are represented by legal counsel. This procedure provides ample protection for individuals and the public while enabling judges to render decisions based on the needs of both the juvenile and the community.

Response: Except in cases of the most serious offenses — kidnapping, armed robbery, first or second degree murder, attempted murder, assault with intent to commit murder, armed assault with intent to rob, or first degree criminal sexual conduct — Senate Bill 136 (S-2) would in fact retain judicial discretion. Granted, waiver would be required for other serious offenses by repeat offenders unless it could not be shown by a preponderance of the evidence that the court should not waive jurisdiction, but the bill would permit flexibility to accommodate the needs of a child capable of rehabilitation within the juvenile justice system despite the severity of his or her offense. Furthermore, even in cases in which waiver would be automatic, the prosecutor still would have to bring a waiver motion.

Opposing Argument

While automatically waiving jurisdiction over certain juvenile offenders could alleviate the fears of those concerned about the release of juveniles at the age of 19, it would be inappropriate to single out one piece of the system and make it punitive. If changes are to be made, the entire system of juvenile adjudication and disposition must be examined. It may well be that other options would prove more advisable than those proposed here. For example, extending the juvenile court's jurisdiction would be one way to address the problem. Further, while certain factors must now be considered in a waiver hearing, no actual guidelines exist regarding which cases should and which should not be waived. Also, the incorporation of swift and sure punishment through a determinate sentencing or dispositional approach might be valuable.

Although there is no evidence that the bills would effectively resolve inadequacies within the present system, it is certain that they would add yet another burden to the already overwhelmed adult criminal justice system. Furthermore, prosecutors could still avoid automatic waiver by charging the juvenile with a less serious offense in order to keep him or her in juvenile court, which could lead to a more lenient, rather than a more severe, result.

Response: Comprehensive juvenile code revision may be the best approach in theory, but the fact is that it has been considered for the last dozen years with little progress having been made.

Opposing Argument

The policy of mandating the waiver of jurisdiction over certain juveniles aged 15 or older who commit serious felonies would return us to the common law of the 1800s and earlier when 14-year-old children were held to the same criminal responsibility as adults and were therefore tried and punished in the adult criminal justice system. Traditionally, this State has taken a more enlightened and humane approach. Further, it is the public policy of this State to make a distinction for minors regardless of their offense. Juvenile law has long recognized that these individuals are still capable of being formed, and it would be morally wrong to damn them for life on the basis of one offense.

Response: A person who commits the type of crime for which waiver would be automatic is beyond rehabilitation and, despite being underage, is not entitled to the sensitive treatment afforded other juvenile offenders.

Opposing Argument

The call for mandatory waiver comes from at least one popular misperception: that juvenile court judges should get tough with many juvenile offenders and waive them to adult court for more appropriate punishment, instead of simply slapping them on the wrist and setting them free. Although many may assume that the adult court will properly punish these individuals, a waived juvenile may not actually receive the treatment he or she needs and deserves nor the punishment the public expects. Reportedly, research performed by the National Center for Juvenile Justice found that the criminal judges who sentence a high volume of older, serious felons on a daily basis tend to view juveniles in a more lenient light; in fact, in one jurisdiction, the adult court was found to be half as likely as the juvenile court to commit a violent juvenile offender to confinement.

Opposing Argument

Senate Bill 138 (S-2) would require that a juvenile convicted of a felony and sentenced to prison be placed in a "separate facility for juveniles". It should be clarified whether this means a separate prison, that is, a separate

physical structure, which could necessitate construction or designation of a new facility, or simply separate placement within a facility that also houses adults.

Opposing Argument

What is needed is not a piece of punitive legislation, such as Senate Bill 136 (S-2), but a constructive approach to the problems within the juvenile justice system. With more and more juveniles being caught up in the system at increasingly younger ages, the answer is not to throw more juveniles and more money into the adult system, which itself is in a state of chaos. Instead, increased funding should be directed toward juvenile courts; the Department of Social Services, to which juvenile offenders are referred; and youth assistance programs, in which volunteers provide counseling, tutoring, and referrals to substance abuse programs, as well as recreation and cultural activities. Further, if something is not done to protect abused and neglected juveniles, who often turn to crime from a lack of parental supervision, problems in our communities will persist and the corrections system will have to keep increasing prison space. Considering the far-reaching impact on our society of juveniles lost in lives of crime, such a revamping of the entire system would be cost-effective in the long run.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.