SFA BILL ANALYSIS

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Senate Bill 223 (as reported with amendment)
Sponsor: Senator Phil Arthurhultz
Committee: Criminal Justice, Urban Affairs, and Economic Development

Date Completed: 5-12-87

RATIONALE

Many claim that minors who come under the authority of the juvenile division of the probate court should not be detained with or exposed to adult offenders. These minors 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 (minors 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 (minors who have committed crimes for which they would be subject to criminal sanctions if they were adults. The juvenile offender status of minors over 15 may be waived, allowing them to be tried and sentenced as adults.)

Under Chapter 12A of Public Act 288 of 1939, 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 that requires that children held in jails not only be separated from adult offenders, but be entirely out of sight and sound of them. According to 1985 testimony before the Senate Public and Mental Health committee, however, 82% of the 67 Michigan jails that house juveniles are unable to comply with this standard consistently. Furthermore, it has been reported that even those jails able to meet this standard generally lack the staff and programs necessary to respond to the unique needs of minors.

It is also reported that various studies have indicated 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. Proponents of this view believe that detaining minors in need of protection and status offenders with juvenile offenders, leaves them vulnerable to physical and emotional abuse, exposes them to values that can lead them to become juvenile offenders themselves, and deprives them of an environment in which their problems can be treated.

Finally, the Federal Juvenile Justice and Delinquency Prevention Act (JJDPA) requires each state receiving funding under that Act to have a complete ban on juvenile jailing by December 1989. Reportedly, therefore, if Michigan does not amend its law on this issue, the Federal funding could be lost.

CONTENT

Senate Bill 223 would amend the juvenile code to:

- **Prohibit the secure detention of neglected or abused juveniles and, except under certain circumstances, status offenders and runaways.**
- **Prohibit status offenders and neglected or abused juveniles from being held in secure adult facilities.**
- **Expand the circumstances under which juveniles may be held pending a hearing.**

Secure Detention

The bill specifies that a child taken into custody under certain conditions (for actions commonly referred to as "status offenses", or for running away from home) could not be detained in any secure facility designed to restrict the movements and activities of alleged or adjudicated juvenile offenders unless the Probate Court found that the child willfully violated a court order and, after a hearing, found that there was not a more appropriate, less restrictive alternative.

In addition, a child taken into custody for a status offense or for running away, who had not been found to have violated any municipal ordinance or State or Federal law that would be a felony if committed by an adult, could not be detained in a cell or secure area of a secure facility designed to incarcerate adults.

A child taken into custody because of neglect or abuse, or home conditions that necessitate immediate removal, could not be detained in a secure facility designed to restrict the movements and activities of alleged or adjudicated juvenile offenders or in a cell or secure area of a secure facility designed to incarcerate adults.

The bill specifies that the State would have to reimburse local units of government for costs associated with any new or increased levels of service or activity required by the Act as a result of the bill's passage.

Custody

The bill would allow custody, pending a hearing, of children who have a record of unexcused failure to appear at juvenile court proceedings or those who have failed to remain in a detention or nonsecure facility or placement in violation of a court order. The bill also would allow "custody", pending a hearing, of children in the following circumstances, for which the current law allows "detention":

- Those whose home conditions make immediate removal necessary.
- Those who have run away from home.
- Those whose offenses are so serious that release would endanger public safety.

In addition, the bill would delete a provision of the Act allowing detention of children detained for observation, study, and treatment.

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Definitions

The term "status offense" refers to an action that would not be an offense if committed by an adult, but for which a juvenile may come under the jurisdiction of the probate court. Status offenses include the following:

- Desertion of the child's home without sufficient cause, or repeated disobedience to the reasonable and lawful commands of the child's parents, guardian, or custodian.
- Repeated association with immoral persons, leading an immoral life, or being found on premises used or occupied for illegal purposes.
- Repeated failure to attend school or repeated violations of the school's rules, if the child is required by law to attend school.
- Habitual idleness.
- Patronizing or frequenting a tavern or other place where the primary business is the sale of alcohol.

The code's abuse and neglect provisions give the probate court jurisdiction over children in the following circumstances:

- The child's home environment is an unfit place in which to live due to neglect, cruelty, drunkenness, criminality, or depravity on the part of the child's parent, guardian, or other custodian.
- The child's parent, or other person legally responsible for his or her care and maintenance, neglects or refuses to provide proper support, education, medical, surgical, or other care necessary for the child's health or morals.
- The child is deprived of emotional well-being; is abandoned by his or her parents, guardian, or other custodian; or is otherwise without proper custody or guardianship.

MCL 712A.15 et al.

FISCAL IMPACT

Senate Bill 223 would result in an indeterminate increase in State expenditures due to changes in the juvenile code pertaining to the placement of children in custody and the detention of status offenders.

Changes to Section 15(2) would enable a court to place in custody 1) a child who had a record of unexcused failures to appear at juvenile court proceedings and 2) a child who had run away from a detention or nonsecure facility or placement in violation of a court order. The total cost of placing these children in custody cannot be determined by the data currently available. FY 1986-87 detention rates range from $100 to $150 per day.

Amendments to Section 15(2) also would replace the term "detention" with "custody". Costs may be attributed to this replacement. "Detention" implies a secure facility, while "custody" may include both nonsecure (e.g., foster homes and shelter centers) and secure placements. The per-day cost for a secure placement ($100 - $150/day) is substantially greater than for nonsecure placements ($30 - $40/day).

In addition, the bill would affect costs associated with the detention of status offenders. Section 15(3) would allow the court to detain status offenders in secure facilities in cases in which the court could not find less restrictive placements or the child had violated a court order. There are not any means currently available to ascertain the number of status offenders meeting these criteria. This new subsection would have an indeterminate impact on State expenditures.

ARGUMENTS

Supporting Argument

The bill would help keep children who are already in a vulnerable position out of an environment that can cause them harm. 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 greater than that of juveniles in the general population and eight times greater than that of minors in juvenile detention centers. Michigan law long has acknowledged the danger of jailing minors by restricting the conditions under which they may be jailed, but these restrictions are not enough. Reportedly, 82% of Michigan's 67 jails to which minors may be sent can't guarantee that the minors will be out of the sight and sound of adult offenders and thus protected from possible emotional and physical abuse. In those jails where complete separation can be achieved, a minor may face a different, and perhaps even more disturbing trauma — isolation. Despite good intentions, overburdened jail staff lack the training and resources to meet the unique needs of detained minors. 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.

Supporting Argument

Michigan's jails do not have enough room for serious adult criminals, let alone status offenders. Overcrowding is a problem in many of Michigan's jails, and many county 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 sometimes must empty an entire wing of cells in order to detain one child.

Opposing Argument

An exception should be made for rural counties to the proposed prohibition against placing status offenders in jails. While it would 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 that distance from their own community to a facility where they would be mixing with potentially more dangerous youths, and where the staff was neither familiar with nor prepared to deal with the individual cases. When juveniles are removed from their own community, institutionalization can become a dead end street.

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 abuse, such as beatings and suicide, of juveniles who are placed in inappropriate facilities, and 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 still is inevitable and the juveniles are unavoidably isolated and subject to sensory deprivation, which is a major cause of jailhouse suicide.

MORE

In addition, an exception for rural counties could threaten the State's eligibility for Federal funding since states receiving JJDPA funds must have a complete ban on juvenile jailing by the end of 1989.

Opposing Argument

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.

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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.

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