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BILL ANALYSIS

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House Bill 5203 (as reported with amendment)**Sponsor: Representative John G. Strand****House Committee: Judiciary****Senate Committee: Judiciary****Date Completed: 3-8-88****RATIONALE**

Reportedly, juvenile crime is down overall, but some claim that the numbers of violent juvenile offenders may be higher than ever. One method 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 waive to criminal court, upon the motion of the prosecuting attorney, a juvenile at least 15 years old for whom there is probable cause to believe that he or she has committed what would be a felony if committed by an adult. In deciding whether to waive a juvenile to criminal court, the juvenile 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, including 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. Both of these criteria have been refined by the Supreme Court, but reportedly continue to create impediments to waiver. Some believe that these criteria should be clarified.

CONTENT

The bill would amend the juvenile code to revise the criteria that the juvenile court must consider in deciding whether to waive to a court of general criminal jurisdiction a juvenile charged with what would be a felony if committed by an adult. At present, the juvenile court must hold a hearing to determine whether there is probable cause to believe the juvenile committed the offense, and, upon a showing of probable cause, the court must determine whether the interests of the juvenile and the public would be best served by granting a waiver. In making that determination, the court must consider the following criteria: 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 juvenile may be beyond rehabilitation under existing juvenile programs and statutory procedures; 4) the relative suitability of programs and facilities available to the juvenile in the juvenile and 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 juvenile stand trial as an adult.

The bill generally 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 juvenile was not amenable to treatment or that despite a juvenile's potential for treatment, the nature of his or her delinquent behavior was likely to disrupt the

rehabilitation of other children in the treatment program.

- Whether, despite the juvenile's potential for treatment, the nature of his or her delinquent behavior was likely to render the juvenile dangerous to the public if released at the age of 19 or 21.

The court would be required to give each criteria "weight as appropriate to the circumstances". The court also would have to put the granting or denial of a waiver motion in writing and include the reasons for denial; presently, this requirement applies only when a waiver motion is granted.

In addition, if the court waived jurisdiction, the probable cause hearing would satisfy the requirements, and be considered the equivalent of the preliminary examination that otherwise would be required under the Code of Criminal Procedure. The probable cause finding would have to be made "on the record". Before a juvenile could waive a juvenile court probable cause hearing, the court would have to inform the juvenile that that waiver would waive the preliminary examination.

The bill would require that a written transcript of the probable cause testimony and finding be prepared or filed upon a "timely made" written demand of the prosecuting attorney, the child's attorney, or an unrepresented child. (A demand would be considered timely if it were filed within two weeks following the arraignment on the information.) A trial court, on its own motion also could order such a written transcript to be prepared or filed. Copies of a written demand would have to be filed with the trial court, all attorneys of record, and the court that held the probable cause hearing. Upon a written demand or court order, the transcript or a portion of it would have to be filed with the trial court. If a written demand were not timely made, a written transcript would not have to be filed except "upon motion of an attorney or a defendant who is not represented by an attorney, upon cause shown, and when granting of the motion would not delay the start of the trial" (MCL 766.15).

The bill would take effect June 1, 1988.

The bill is tie-barred to House Bills 4731, 4733, 4741, 4748, and 4750, and Senate Bills 137, 601, 604, 605, 607, 608, and 609, which constitute a package of proposals that would modify the way the courts deal with the jurisdiction over, and adjudication, treatment or punishment of juvenile offenders.

MCL 712A.4

H.B. 5203 (3-8-88)

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted amendments to the bill that would require a juvenile court's probable cause finding to be made "on the record" and provide for the request or court order of the filing of a written transcript of the probable cause testimony and finding. The House-passed version of the bill, instead, would have required the juvenile court to determine probable cause "in a written finding".

FISCAL IMPACT

The bill would have an indeterminate impact on State and local government. Allowing the probable cause finding under Section 4(3) to satisfy the requirements of a preliminary examination would result in administrative savings.

Additional waivers that could occur due to the bill cannot be estimated. These would result in increased costs to the Department of Corrections.

ARGUMENTS

Supporting Argument

The bill is an important element in a package that proposes a reasonable approach to the problem of how to deal effectively with violent and hardened juvenile offenders without sacrificing the opportunity to rehabilitate salvageable youths within the juvenile justice system. The bill 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 confusion regarding the interpretation of the criteria.

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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.