



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 689 (Substitute S-3 as passed by the Senate)
Senate Bill 690 (Substitute S-3 as passed by the Senate)
Senate Bill 691 (Substitute S-3 as passed by the Senate)
Senate Bill 692 (Substitute S-2 as passed by the Senate)
Senate Bill 694 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Michael J. Bouchard
Committee: Judiciary

Date Completed: 3-11-96

CONTENT

Senate Bills 689 (S-3), 690 (S-3), 691 (S-3), 692 (S-2), and 694 (S-3) would amend various acts to reduce from 15 to 14 years the minimum age at which a minor may be tried as an adult in a court of general criminal jurisdiction, rather than as a juvenile in the juvenile division of probate court (juvenile court).

Senate Bills 689 (S-3) through 692 (S-2) apply to the offenses for which a prosecutor may file criminal charges directly in a court of criminal jurisdiction, and would expand that list of offenses; include an attempt, conspiracy, or solicitation to commit any of the specified offenses, any lesser included offense of one of those violations, and any other violation arising out of the same transaction as any of the applicable violations; and refer to any of those offenses as a "specified juvenile violation".

Senate Bill 694 (S-3) applies to the waiver of jurisdiction over a juvenile by the juvenile court and would delete and replace the factors a probate judge must consider when determining whether to waive jurisdiction over a juvenile to a court of general criminal jurisdiction. The bill also would require waiver if direct criminal charges previously had been filed against a juvenile.

The bills are tie-barred and would apply to offenses committed on or after their effective date.

Under current law, a criminal court can gain jurisdiction over a 15- or 16-year-old juvenile in one of two ways. (In Michigan's criminal justice

system, a "juvenile" is someone under 17 years of age.) After investigation and examination, upon the motion of the prosecuting attorney, the juvenile court may waive jurisdiction over a minor who is at least 15 and is charged with a felony. In addition, if a prosecuting attorney has reason to believe that a juvenile 15 years of age or older has committed any of the following offenses, the prosecuting attorney may authorize the filing of a criminal complaint and warrant on the charge:

- Assault with intent to murder (MCL 750.83).
- Armed assault with intent to rob and steal (MCL 750.89).
- Attempted murder (MCL 750.91).
- First-degree murder (MCL 750.316).
- Second-degree murder (MCL 750.317).
- First-degree criminal sexual conduct (MCL 750.520b).
- Armed robbery with aggravated assault (MCL 750.529).
- Carjacking (MCL 750.529a).
- Manufacturing, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine (MCL 333.7401(2)(a)(i)).
- Possession of 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine (MCL 333.7403(2)(a)(i)).

Senate Bills 689 (S-3) through 692 (S-2) would add all of the following to that list:

- Burning a dwelling house (MCL 750.72).
- Assault with intent to maim (MCL 750.86).
- Kidnapping (MCL 750.349).
- Bank, safe, and vault robbery (MCL 750.531).

Senate Bill 689 (S-3)

The juvenile code specifies that the juvenile court has exclusive jurisdiction over a child at least 15 years of age who is charged with a violation for which a prosecuting attorney may authorize a complaint and warrant in a court of criminal jurisdiction, only if the prosecuting attorney files a petition in the juvenile court instead of authorizing a criminal complaint and warrant. The bill would amend the code to refer, instead, to a child at least 14 years old. The bill also would add the offenses noted above to the list of violations for which a prosecutor may file criminal charges against a juvenile.

Senate Bill 690 (S-3)

The Code of Criminal Procedure specifies that a prosecuting attorney may authorize the filing of a complaint and warrant with a magistrate concerning a juvenile at least 15 years of age if the prosecuting attorney has reason to believe that the juvenile has committed one of the crimes for which a prosecutor may authorize a criminal complaint and warrant against the juvenile. The bill would amend the Code to refer to a juvenile at least 14 years of age. The bill also would add the offenses noted above to the list of violations for which a prosecutor may file criminal charges against a juvenile.

Senate Bill 691 (S-3)

The Revised Judicature Act specifies that the circuit court has jurisdiction over crimes for which the prosecuting attorney may authorize a criminal complaint and warrant if committed by a juvenile at least 15 years of age. The bill would amend the Act to refer to a juvenile at least 14 years of age. The bill also would add the offenses noted above to the list of violations for which a prosecutor may file criminal charges against a juvenile.

Senate Bill 692 (S-2)

Public Act 369 of 1919, which regulates the Detroit Recorder's Court, specifies that the Recorder's Court has jurisdiction over crimes for which the prosecuting attorney may authorize a criminal complaint and warrant if committed by a juvenile at least 15 years of age. The bill would amend the Act to refer to a juvenile at least 14 years of age. The bill also would add the offenses noted above to the list of violations for which a prosecutor may file criminal charges against a juvenile.

Senate Bill 694 (S-3)

Under the juvenile code, in determining whether to waive jurisdiction over a juvenile to a court of general criminal jurisdiction, the juvenile court must consider specified criteria, giving each weight as appropriate to the circumstances. The bill would replace those factors. In considering the bill's factors, the juvenile court would have to give greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other factors.

The current criteria, which the bill would delete, are all of the following:

- The prior record and character of the child, his or her physical and mental maturity, and his or her pattern of living.
- The seriousness of the offense.
- Whether the offense is part of a repetitive pattern of offenses that would lead to a determination either that the child is not amenable to treatment or that, despite the child's potential for treatment, the nature of his or her delinquent behavior is likely to disrupt the rehabilitation of other children in the treatment program.
- Whether, despite the child's potential for treatment, the nature of his or her delinquent behavior is likely to render the child dangerous to the public if released at the age of 19 or 21.
- Whether the child is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.
- 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, instead, would require that the juvenile court consider the following criteria in determining whether to waive jurisdiction over a juvenile:

- The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
- The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in

planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

- The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- The juvenile's programming history, including, but not limited to, his or her willingness to participate meaningfully in available programming.
- The adequacy of the punishment or programming available in the juvenile justice system.
- The dispositional options available for the juvenile.
- Whether the juvenile committed the offense while participating in, assisting, promoting, or furthering the interests of a "criminal organization". ("Criminal organization" would mean an ongoing formal or informal association of persons whose members or associates individually or collectively engaged in the commission, attempted commission, facilitation, or solicitation of criminal activity.)

If the juvenile court determined that there was probable cause to believe that an offense had been committed that if committed by an adult would be a felony and that the juvenile committed the offense, the court would have to waive jurisdiction of the juvenile if the court found that he or she had previously been subject to the jurisdiction of the circuit court or the Detroit Recorder's Court upon a prosecutor's direct filing of criminal charges.

MCL 712A.2 (S.B. 689)
764.1f & 766.14 (S.B. 690)
600.606 (S.B. 691)
725.10a (S.B. 692)
712A.4 (S.B. 694)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 689 (S-3) through 692 (S-2)

The bills would have an indeterminate fiscal impact on State government.

Lowering from 15 to 14 the age at which a minor may be tried as an adult in circuit court (in only those instances in which the prosecutor may file directly), could result in increased commitments to

the Department of Corrections (DOC). However, given that under current law, 14-year-old offenders may be sentenced to a Department of Social Services (DSS) facility (and could continue to be under the bills), the effect of these bills could be simply to shift the responsibility for commitment from the DSS to the DOC. Currently, a 15- or 16-year-old offender convicted of a crime for which the prosecutor may file directly may be sentenced to the DSS or to the DOC.

In order to determine the actual impact of the bills, one needs to determine the estimated number of new commitments to the DOC as a result of the lower age for only those crimes for which the prosecutor may file directly. While currently available data do not include all of the listed crime categories, in 1994, there were 170 commitments to the DOC for offenders who were either 15 or 16 at the time of the offense with an average minimum sentence of seven years. (Eleven sentences were for life, and all of those were for first-degree murder. Data limitations do not provide the number of these commitments that were the result of direct filing by the prosecutor.) During FY 1993-94 (calendar year data not being currently available), there were 113 commitments aged 15 and 16 to the DSS for "serious felony against a person" offenses, as defined by the DSS. (These offenses could include crimes other than those included for DOC commitments above, or other than those eligible for prosecutorial discretion, and also would include offenders sentenced to the DSS through probate court. The number of annual commitments to the DSS, by circuit court, however, is currently unavailable.) If one assumes that the serious felony against a person category represents those crimes for which the prosecutor may file directly, then for those offenders receiving a sentence of incarceration, approximately 41% received a prison sentence and 59% received a DSS sentence.

In FY 1993-94 there were 36 14-year-old offenders committed to the DSS for a serious felony against a person. If the same distribution of sentence disposition patterns were to apply to 14-year-olds as applies to 15- and 16-year olds, then one might expect 41% or 15 of these offenders, under the bills, to receive a prison sentence rather than a sentence to the DSS.

If one assumes that the average length of sentence in a DSS facility of a 14-year-old offender is five years, then the cost of the DSS sentence for those 15 offenders would range from \$4.6 million to \$5.9 million depending on the level of confinement. If these offenders would instead be sentenced to the DOC, total costs of incarceration,

assuming a seven-year sentence, would be \$2.1 million. In other words, if the bills resulted in more 14-year-olds sentenced to prison, for average sentences of seven years, and a corresponding reduction in those commitments to the DSS, then the State could realize some savings, the magnitude of which would be determined by the average sentence lengths of the two types of commitments, and the number of annual commitments. Under the assumptions and analysis described above, the State would realize savings ranging from \$2.5 million to \$3.8 million.

It is difficult at this time to determine what impact the inclusion of conspiracy or solicitation, or the inclusion of a lesser offense of one of the listed crimes, or the addition of four new crimes would have on the number of times a prosecutor would file directly in circuit court and the corresponding impact on the number of offenders sentenced to prison rather than to a DSS facility. All other things being equal, it would require a prison sentence greater than 11 years before the costs of DOC incarceration exceeded the average cost of a three-year DSS juvenile detention center sentence.

Senate Bill 694 (S-3)

An accurate assessment of the bill's effect on the number of juveniles over whom jurisdiction is waived from juvenile court to the general criminal court cannot be made. Following is a comparison of the cost of commitment to a juvenile facility and the cost of adult criminal sanctions. The bill would have an indeterminate fiscal impact on the Department of Corrections.

If the new factors listed in the bill resulted in an increased number of juvenile commitments to prison (instead of to a DSS facility), then costs for the DOC would increase, while costs for the DSS would decrease. Given that average daily costs at a DSS facility are substantially higher than a DOC prison, on average it would require a prison sentence of 4.7 years to equal one year of DSS confinement. The average prison sentence for all 15- and 16-year-olds admitted to prison in 1994 was 6.9 years.

In addition, it is not possible to assess whether courts would be deterred from committing a significant number of juveniles to DSS facilities by the new factors listed in the bill for consideration in waiving jurisdiction.

AVERAGE ANNUAL STATE COSTS	
<u>Department of Social Services</u>	<u>Department of Corrections</u>
Detention Center. \$ 78,900	Probation. \$ 3,000
Family Group/Shelter Homes. 9,700-9,325	Tether. 2,375
Residential Care Center. 61,600	Boot Camp*. 11,500
Foster Family Homes. 7,264	Secure Confinement. 20,000
*Includes 1-year intensive supervision.	

Fiscal Analyst: M. Hansen
C. Cole
M. Bain

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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.