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BILL ANALYSIS



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Senate Bill 699 (Substitute S-5 as passed by the Senate)
Senate Bill 700 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Dick Posthumus
Committee: Judiciary

Date Completed: 1-8-96

CONTENT

Senate Bill 699 (S-5) would amend the Code of Criminal Procedure to revise the sentencing requirements for certain juvenile offenders tried as adults by doing the following:

- **Requiring juveniles to be sentenced as adults, except under certain circumstances, when charges were filed directly in criminal court.**
- **Revising the factors that a court must consider in determining whether to sentence a juvenile as an adult.**
- **Providing that a juvenile tried as an adult and committed to a juvenile facility could subsequently be committed to the Department of Corrections.**
- **Requiring a final review of a juvenile tried as an adult and committed to a juvenile facility, and allowing the court to impose an adult sentence after the review.**

Senate Bill 700 (S-2) would amend the Youth Rehabilitation Services Act to revise the definition of "state ward" with respect to a juvenile sentenced as an adult to probation and committed to a juvenile facility.

Senate Bill 699 (S-5) specifies that it would apply to offenses committed on or after the bill's effective date. Senate Bill 700 (S-2) is tie-barred to Senate Bill 699.

Senate Bill 699 (S-5)

A court of criminal jurisdiction would have to sentence as an adult a juvenile convicted of assault with intent to commit murder, attempted murder, conspiracy to commit murder, solicitation to commit murder, first-degree murder, second-degree murder, or first-degree criminal sexual conduct. Currently, if a juvenile is charged as an adult upon the direct filing of criminal charges and without a juvenile court waiver hearing, the court must conduct a hearing at sentencing to determine whether to sentence the juvenile as an adult or to commit him or her to a juvenile facility. Under the bill, that requirement would not apply to a juvenile convicted of one of the above offenses; for other juveniles, the court would have to sentence a juvenile as an adult unless it determined by a preponderance of the evidence that the interests of the public would be best served by placing the juvenile on probation and committing him or her to a juvenile facility. (Any juvenile who is tried as an adult *after* a waiver hearing and is convicted, is sentenced as an adult.)

Currently, in making a determination of whether to sentence a juvenile as an adult (when charges have been filed without a waiver hearing), the court must consider the following factors, "giving each weight as appropriate to the circumstances":

- The prior record and character of the juvenile, his or her physical and mental maturity, and his or her pattern of living.

- The seriousness and the circumstances of the offense.
- Whether the offense was part of a repetitive pattern of offenses that would lead to a determination either that the juvenile is not amenable to treatment or that, despite the juvenile's potential for treatment, the nature of his or her delinquent behavior is likely to disrupt the rehabilitation of other juveniles in the treatment program.
- Whether, despite the juvenile's potential for treatment, the nature of his or her delinquent behavior is likely to render the juvenile dangerous to the public if released at the age of 21.
- Whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.
- What is in the best interests of the public welfare and the protection of the public security.

The bill would delete those factors and replace them with the following criteria:

- 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, the juvenile's past 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.)

The bill also would require that, in considering the factors listed above, the court "give greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency".

If a juvenile is placed on probation and committed to a juvenile facility, the sentencing court retains jurisdiction over the juvenile, must conduct an annual review of the services provided to the juvenile, and may order changes in the juvenile's placement or treatment plan based on that review. The bill specifies that the changes could include, but would not be limited to, committing the juvenile to the Department of Corrections.

In addition, the bill would require that, for a juvenile tried and convicted as an adult but placed on probation and committed to a juvenile facility, the sentencing court conduct a final review of the juvenile's probation and commitment at least three months before the end of the period that the juvenile was on probation and committed to the juvenile facility. If the court determined that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender, the court could impose that sentence. In making its determination, the court would have to consider the Code's criteria for a court to determine whether it should continue jurisdiction over a juvenile sentenced to probation and committed to a juvenile facility, as well as all of the following:

- The effect of treatment on the juvenile's rehabilitation.
- Whether the juvenile was likely to be dangerous to the public if released.
- The best interests of the public welfare and the protection of public security.

At least 14 days before a final review hearing was to be conducted, the prosecuting attorney, juvenile, and, if addresses were known, the juvenile's parent or guardian, would have to be notified. The notice would have to state that the court could impose a sentence upon the juvenile and advise the juvenile and his or her parent or guardian of the right to legal counsel. If counsel were not

retained or appointed to represent the juvenile, the court would have to appoint legal counsel and could assess the cost of providing counsel as costs against the juvenile or those responsible for his or her support, or both, if the persons to be assessed were financially able to comply.

After a sentence was imposed or jurisdiction continued, subsequent to a review hearing, the juvenile would have to receive credit for the period of time served on probation and committed to a juvenile facility.

The Code also provides that, if a juvenile convicted as an adult but placed on probation and committed to a juvenile facility violates probation by being convicted of a felony or a misdemeanor punishable by more than one year's imprisonment, the court must revoke probation and commit the juvenile to the Department of Corrections (DOC) for a term of up to the penalty that could have been imposed for the original conviction. If a juvenile violates probation in any other manner, however, the court may not order him or her committed to the DOC, but must continue probation and order the juvenile to pay restitution. In addition, the court may order any of the following for the juvenile:

- A change of placement.
- Community service.
- Substance abuse counseling.
- Mental health counseling.
- Participation in a vocational-technical education program.
- Incarceration in a county jail for up to 30 days. (If a juvenile is under 17 years of age, however, he or she must be placed in a room or ward out of sight and sound from adult prisoners.)
- Other participation or performances that the court considers necessary.

The bill would delete the prohibition against committing a juvenile probation violator to the DOC and the requirement that the court continue probation and order restitution. Under the bill, the court could order commitment to the DOC *or* any of the sanctions listed above.

Senate Bill 700 (S-2)

The Youth Rehabilitation Services Act includes in the definition of "state ward" a person accepted for care by the Department of Social Services (DSS) who is at least 15 years of age at the time he or she is committed to the DSS by a court of general criminal jurisdiction, if the act for which the youth is committed occurred before his or her 17th birthday. The bill would amend the Act to refer, instead, to a person who was at least 14 at the time he or she was committed.

MCL 769.1 et al. (S.B. 699)
803.302 (S.B. 700)

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would have an indeterminate impact on State government.

According to data provided by the Department of Social Services (DSS), in FY 1993-94, there were 113 juveniles ages 15-16 who were committed to the DSS for a serious felony against a person (which includes all of the offenses listed in the bill). There are currently no data available on how many of these juveniles came through probate court and how many were sentenced through adult court, or how many were convicted of murder or first-degree criminal sexual conduct. The adult court commitments for murder and first-degree criminal sexual conduct would, under the bill, have to be sentenced to prison instead of a DSS facility.

If one assumes that 10 of the DSS commitments were from adult court and convicted of murder or first-degree criminal sexual conduct, and one assumes an average prison sentence of 13 years, total costs of prison incarceration for these 10 offenders would be \$2.0 million. (The average sentence length of 15- and 16-year-olds sentenced to prison for listed offenses, excluding first-degree murder, through adult court last year was 13.3 years.) The cost of a DSS commitment for

these 10 offenders, assuming a five-year commitment, would range from \$3.1 million to \$4.0 million depending on the level of confinement. Under these assumptions, the bill could result in cost savings to the State given that a DSS commitment is, on average, more costly than a commitment to an adult prison. However, if the average length of prison sentence for these juvenile offenders who previously have been committed to DSS, were greater than 20 years, then State costs would increase as a result of the bill.

There also would be additional costs to the DOC for those juvenile offenders, who after a DSS commitment, were ordered to an additional period of incarceration in an adult prison. There is no reliable way to predict how many juvenile offenders would receive additional adult prison time, and the average length of sentence for these commitments.

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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.