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

BILL ANALYSIS

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

Senate Bill 866 (Substitute S-2 as reported)
Senate Bill 867 (Substitute S-2 as reported)
Senate Bill 868 (Substitute S-2 as reported)
Senate Bill 869 (Substitute S-2 as reported)
Senate Bill 870 (Substitute S-1 as reported)
Sponsor: Senator Mike Rogers (Senate Bills 866 & 870)
Senator Loren Bennett (Senate Bills 867 & 869)
Senator Joel D. Gougeon (Senate Bill 868)
Committee: Judiciary

Date Completed: 3-14-96

RATIONALE

In January, two youths committed to the W.J. Maxey Training Facility in Livingston County walked away from a work-release assignment at a local restaurant. According to a March 4, 1996, Detroit Free Press article, one youth was still missing and the other, whose juvenile offense was killing two people, had turned himself in the previous week. Although these boys were serving a court-ordered commitment at the juvenile facility, they apparently committed no crime by escaping from that commitment. Under Michigan law, it is a felony to escape from jail or prison and a misdemeanor to assist a person to escape from juvenile confinement, but escape from a juvenile facility in itself is not a criminal violation. Some people believe that, to deter youths from escaping from juvenile commitment and to give law enforcement officials the tools they need to pursue and prosecute juvenile escapees, escape from a juvenile facility should be codified as a criminal offense and that, under some circumstances, escape should be among the crimes for which a prosecutor can seek adult trial and punishment without a waiver hearing in the juvenile division of probate court (juvenile court).

In addition, since violent crime committed by juveniles reportedly has been on the rise in recent years, some feel that the age at which a prosecutor may seek adult sanctions against a juvenile defendant should be lowered from 15 to 14 years of age and that the list of offenses for which a prosecutor may file criminal charges without a juvenile court waiver hearing should be expanded.

CONTENT

Senate Bills 866 (S-2), 867 (S-2), 868 (S-2), and 869 (S-2) would amend various Acts to do all of the following:

- **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 for certain offenses, without a waiver hearing, rather than as a juvenile in juvenile court. (The bills' age reduction provisions would not apply to a juvenile tried as an adult after a juvenile court waiver hearing.)**
- **Expand the list of offenses for which a prosecutor may file criminal charges in a court of criminal jurisdiction against certain minors, without first petitioning the juvenile court to waive jurisdiction over the juvenile. Among the additional offenses, the bills would include the new felony of escape from a juvenile facility, as proposed by Senate Bill 870 (S-1), if the facility were a high-security or medium-security facility operated by the Family Independence Agency (FIA) or by a private agency under contract with the FIA.**
- **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.**

-- Refer to any of the offenses for which a prosecutor may file criminal charges against a juvenile, without a juvenile court waiver hearing, as a "specified juvenile violation".

Senate Bill 870 (S-1) would amend the Michigan Penal Code to make it a felony for a person to escape or attempt to escape from a juvenile facility or from the custody of an employee of that facility.

Senate Bills 866 (S-2) through 869 (S-2) are tie-barred to each other and to Senate Bill 870, and would apply to offenses committed on or after their effective dates.

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 866 (S-2) through 869 (S-2) would add all of the following felonies 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).
-- Escape from a high-security or medium-security juvenile facility (proposed MCL 750.186a).

Senate Bill 866 (S-2)

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 867 (S-2)

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, 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 868 (S-2)

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, 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 869 (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, 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 870 (S-1)

Under the bill, it would be a felony for an individual who was placed in a "juvenile facility" to "escape" or attempt to escape from that juvenile facility or from the custody of an employee of that facility. The felony of escape from a juvenile facility would be punishable by up to four years' imprisonment, a maximum fine of $2,000, or both.

"Escape" would mean to leave without lawful authority. "Juvenile facility" would mean a county facility, an institution operated as an agency of the county or the juvenile court, or a State institution or agency described in the Youth Rehabilitation Services Act, to which the individual had been committed under the juvenile code or the Code of Criminal Procedure.

MCL 712A.2 (S.B. 866)
764.1f (S.B. 867)
600.606 (S.B. 868)
725.10a (S.B. 869)
Proposed MCL 750.186a (S.B. 870)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

It makes little sense that escape from court-ordered commitment to a juvenile facility is not a criminal offense. Assisting an escape is a misdemeanor and escape from prison is a felony. Escape from a juvenile facility should be on par with escape from prison. In addition, that violation should be subject to adult penalties. If juveniles could be sent to prison for escaping from a high- or medium-security juvenile facility, they might think twice before walking away.

Also, if escape were a criminal offense, police and prosecutors would be better equipped to enforce the law and protect the public. Since escape is not currently a crime, a juvenile's unexcused absence from a facility might not necessarily be reported to the police and, even if it is reported, there is no charge for a prosecutor to pursue unless the escapee commits another crime. By codifying escape from juvenile facility as a felony, the bill clearly would impose a responsibility on facility officials to report the violations and give law enforcement officials authority to apprehend and prosecute the escapee.

Response: The bill may not be sufficient to address the problem. To facilitate more efficient enforcement, the bill should include specific reporting requirements and guidelines for entry of information into the Law Enforcement Information Network.

Supporting Argument

Juveniles who commit serious criminal offenses should be treated not as children, but as criminals. Adding the felonies of arson of a dwelling, assault with intent to maim, kidnapping, and bank robbery to the list of offenses for which a prosecutor may file criminal charges against a juvenile, and lowering to 14 the minimum age for those prosecutions, would send a message that violent juveniles would be dealt with harshly under Michigan law. These provisions are consistent with juvenile justice reforms passed by the Senate earlier in this legislative session (Senate Bills 689 through 692.)

Response: The offenses for which a prosecutor may file criminal charges without a juvenile court waiver hearing are all subject to penalties of imprisonment for life. The bill would digress from that precedent by including lower-level felonies among the specified juvenile violations.

Opposing Argument

Few juvenile facilities are secure institutions in the same manner that jails and prisons are secure. For instance, often there are no fences surrounding a facility's perimeter or locked cells where the youths sleep. If there is a problem with escape from juvenile facilities, perhaps the State should address it by spending resources up front to make the facilities more secure, rather than adding more layers of criminal offenses to the Penal Code and paving the way for more prosecutions and prison incarceration.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

While the bills provide for a new imprisonment penalty for juveniles escaping from a juvenile

facility, it is difficult to predict how many juveniles would in fact receive a prison sentence for an escape conviction. Given the amount of discretion available at almost every level of the system--from the facility (whether a youth who returned 30 minutes late for example, would be punished with a felony charge) to the prosecution (whether to keep jurisdiction at the probate court or file directly in circuit court), to sentencing (whether the judge would issue a prison sentence, or sentence the juvenile back to the juvenile facility for the escape charge)--making predictions on increased prison admissions for juvenile escapees is difficult.

According to data provided by the Department of Social Services (DSS), 321 of the 4,976 juveniles under DSS supervision on the last day of 1995 were listed as absent without leave. In addition, a total of 60 youths (out of an approximate 900-bed population) were classified as escapees from State-run medium- and high-security facilities during 1995. There are no data that would indicate the types of crimes for which these individuals were sentenced, or their age at the time of the escape. If one assumes that half of the 60 escapes from medium- and high-security facilities were tried and convicted for escape, and half of those received a prison sentence of two years, then State prison costs could increase by approximately $500,000 annually.

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 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 a 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.

Fiscal Analyst: M. Hansen
C. Cole

A9596\S866A