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BILL ANALYSIS



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Senate Bill 281 (Substitute S-4 as passed by the Senate)  
Senate Bill 283 (Substitute S-3 as passed by the Senate)  
Sponsor: Senator William Van Regenmorter  
Committee: Judiciary

Date Completed: 1-8-96

### **CONTENT**

**Senate Bills 281 (S-4) and 283 (S-3) would amend the Code of Criminal Procedure and the Public Health Code, respectively, to revise the sentencing requirements for certain juvenile offenders tried as adults, including allowing an additional sentencing option for juveniles convicted of a controlled substance offense involving 650 grams or more of a Schedule 1 or 2 narcotic or cocaine.** The bills are tie-barred and would apply to offenses committed on or after their effective date.

#### **Senate Bill 281 (S-4)**

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.

Currently, in making a determination of whether to sentence a juvenile as an adult, 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".

In addition, if a juvenile under the jurisdiction of a criminal court were convicted of manufacturing, delivering, creating, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine, the bill would allow a third sentencing option. If the court determined by clear and convincing evidence, using the bill's juvenile sentencing criteria, that the best interests of the public would be served, the court could sentence the juvenile to imprisonment for any term of years with a mandatory minimum of 25 years. (Currently, a juvenile convicted as an adult after a waiver hearing is subject to the mandatory adult sentence for that offense, which is imprisonment for life without opportunity for parole. A juvenile convicted after the direct filing of criminal charges may be sentenced, alternatively, to probation and committed to a juvenile facility.)

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.

### **Senate Bill 283 (S-3)**

The bill would allow an alternative sentence for a juvenile convicted as an adult of manufacturing, creating, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine.

Under the bill, a juvenile convicted as an adult after either a juvenile court waiver hearing or the direct filing of criminal charges could be sentenced to imprisonment for any term of years, but not less than 25 years, if the court determined by clear and convincing evidence that the best interests

of the public would be served by that sentence. (Currently, a juvenile convicted as an adult after a waiver hearing must be sentenced to imprisonment for life without opportunity for parole; a juvenile convicted as an adult after the direct filing of criminal charges may be sentenced either to imprisonment for life without opportunity for parole or to probation and committed to a juvenile facility.) The bill's 25-year minimum sentence would be an additional option.

The bill also would allow a sentencing court to depart from the Code's mandatory sentences for violations involving less than 650 grams, if all of the following applied:

- The person being sentenced were a juvenile tried as an adult after either a waiver hearing or the direct filing of criminal charges.
- The juvenile had not previously been convicted of a felony or assaultive crime.
- The juvenile was not convicted of another felony or assaultive crime arising from the same transaction as the violation for which he or she was being sentenced.
- The court found on the record that there were substantial and compelling reasons to depart from the mandatory minimum sentences.

The current mandatory sentences are: not less than 20 years or more than 30 years for 225 grams or more, but less than 650 grams; not less than 10 years or more than 20 years for 50 grams or more, but less than 225 grams; and not less than one year or more than 20 years, or probation for life, for less than 50 grams.

MCL 769.1 (S.B. 281)  
333.7401 (S.B. 283)

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

### **Senate Bill 281 (S-4)**

The bill 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 Department of Corrections (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.

### **Senate Bill 283 (S-3)**

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

Since 1990, there have been three juveniles aged 15 or 16 at the time of commitment to the DSS for manufacture and delivery of 650 grams or more of cocaine. During the same time period, there also have been three offenders aged 15 or 16 committed to the DOC for manufacture and delivery of 650 grams or more of cocaine.

Of the three youths committed to the DSS, two were sentenced through adult court. While the bill would not likely have much effect on probate court cases (since the probate court cannot sentence a juvenile to prison), it is possible that, if judges had a third option as offered by the bill, at least a portion of the adult court commitments to the DSS would, in the future, instead receive a 25-year prison sentence. If one assumes that half of these commitments would under the bill receive a 25-year minimum prison sentence rather than a three- to five-year DSS commitment, in the long term, State costs could increase, given that costs of a three- to five-year DSS commitment would range from \$184,800 to \$394,500 (depending on level of confinement and length of stay) while a 25-year minimum prison sentence would cost approximately \$500,000.

In addition, one might expect that a certain portion of the annual juvenile commitments to prison for manufacture or delivery of at least 650 grams would, under the bills, receive a minimum 25 years instead of receiving a mandatory life sentence. If one assumes that a portion of the annual (DOC) commitments for this crime, or roughly one per year, received a 25-year minimum rather than a life sentence, in the long term (after 25 years) costs of incarceration would begin to decrease. However, given the relatively low number of annual admissions to either a DSS facility or prison, the fiscal impact on the State as a result of the bill is not expected to be significant.

If the new provisions in the bill that allow departures from mandatory prison sentences resulted in decreased prison admissions, cost for the Department of Corrections would be reduced. Existing language, however, allows departure for substantial and compelling reasons, and judges may already be viewing the lack of a prior felony or assaultive crime as compelling a reason to depart from a mandatory term of incarceration.

Fiscal Analyst: M. Hansen  
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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.