



**Senate Fiscal Agency**  
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BILL ANALYSIS



**Telephone: (517) 373-5383**  
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Senate Bill 511 (as enrolled)  
 Senate Bill 565 (as enrolled)  
 Sponsor: Senator Joe Young, Jr. (Senate Bill 511)  
 Senator Mike Rogers (Senate Bill 565)  
 Committee: Judiciary

Date Completed: 9-29-95

### RATIONALE

Under the Michigan Penal Code's "felony murder" provision, murder committed in the perpetration or attempt of certain felonies constitutes first-degree murder, which requires a sentence of life in prison without possibility of parole. The offenses included in the felony murder law are: arson, first-degree criminal sexual conduct (CSC), third-degree CSC, first-degree child abuse, a major controlled substance offense, robbery, breaking and entering of a dwelling, larceny of any kind, extortion, and kidnapping. A 1995 Michigan Supreme Court decision (*People v Reeves*, 448 Mich 1) held that "arson", for purposes of the felony murder law, means the burning of the dwelling house of another. Some people believe that the felony murder law's arson provision should not be limited to burning a dwelling house, but should encompass other burning offenses included in the Penal Code, as well. In addition, some believe that second-degree CSC and the relatively new crime classification of home invasion should be included as predicate offenses in the Penal Code's felony murder provision. (See BACKGROUND for a description of the *Reeves* case.)

### CONTENT

The bills would amend the Michigan Penal Code to add second-degree criminal sexual conduct and first- and second-degree home invasion to the offenses included in the Code's felony murder provision. For purposes of the felony murder provision, Senate Bill 511 (S-3) would define "arson" as any felony violation of the Code's arson and burning offenses, and Senate Bill 565 (S-3) would define "arson" as the burning of a dwelling house (MCL 750.72), the burning of other real

property (MCL 750.73), the burning of personal property (MCL 750.74), or the burning of insured property (MCL 750.75).

MCL 750.316

### BACKGROUND

In *People v Reeves*, 448 Mich 1 (1995), three defendants were charged with felony murder, the underlying offense being the burning of real property other than a dwelling house (MCL 750.73). It was alleged that the defendants intentionally set fire to a dilapidated, abandoned house. When firefighters responded, the structure collapsed, causing the death of a firefighter trainee. The Detroit Records Court reduced the felony murder charge to involuntary manslaughter, holding that "arson", within the context of the felony murder law, did not include the burning of property other than a dwelling house. The prosecution appealed that ruling.

The Michigan Court of Appeals found that there was a conflict among panels of the Court regarding the meaning of the word "arson" within the Penal Code's felony murder provision. A 1981 opinion (*People v Foster*, 103 Mich App 311) held that the burning of an uninhabitable building was not arson; in 1990, a different panel (*People v Clemons*, 184 Mich App 726) came to the opposite conclusion. The *Reeves* panel of the Court chose to follow the 1981 *Foster* decision and upheld the ruling of the Detroit Records Court, concluding that "the 'arson' referred to in the felony-murder statute is only the burning of a dwelling house as was the case under its common-law definition".

The Supreme Court upheld the lower courts' rulings, concluding "that the construction of the word 'arson' in the felony murder statute refers to the common-law crime of arson, that is, the malicious and voluntary or wilful burning of a dwelling house of another". The Court based this conclusion on an examination of the history of Michigan's arson and burning laws. It noted that the Penal Code's burning proscriptions, which were codified in 1931 and have remained relatively unchanged since then, do not define the term "arson". The Court reasoned that, without "a clear and explicit definition of the criminal offense, we construe the statutory crime by resorting to the common-law definition of the criminal offense".

The Supreme Court also held in the *Reeves* case that the Court of Appeals, in the 1990 *Clemons* case, "improperly expanded the scope of the crime of arson" and overruled the decision in that case. Conversely, the *Reeves* Court found that the 1981 *Foster* decision "is consistent with the history of the arson and burning statute and reflects the legislative intent".

## **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**

The bills would reinforce the Michigan Penal Code's protection of the public, in general, and firefighters, in particular, by broadly applying the predicate offense of "arson" with respect to the Code's felony murder provision. Under the bills, those who committed burning offenses would be held more accountable than they are under the *Reeves* decision for their disregard for the lives of others.

Although the Supreme Court's research and ruling in the *Reeves* case were thorough and well-reasoned, Michigan's felony murder law should apply to more arson offenses than just the burning of a dwelling house. While the *Reeves* case dealt specifically with the burning of an uninhabited and uninhabitable structure, its implications go much farther. If the term "arson", in the context of the Penal Code's felony murder provision, were to continue to be limited to the burning of a dwelling house, that provision would not apply, for instance, to an intentionally set fire of a school, hospital, convention center, automobile, or any other building or property that was not a dwelling house.

By defining "arson", Senate Bill 565 (S-3) would enable the felony murder law to be applied to the violations of burning real, personal, and insured property. Senate Bill 511 (S-3) would go even farther in applying the felony murder law to the predicate offense of arson. By defining arson with respect to all burning offenses in the Penal Code, the bill would cover violations such as intentionally setting a forest fire.

### **Supporting Argument**

The new crime of home invasion, which currently is not a predicate offense under the felony murder law, replaced in the Penal Code the former crime of breaking and entering a dwelling (B&E), which is a predicate offense under the felony murder provision. While the former B&E offense should not be removed from that provision, because there still could be B&E charges filed for incidents that occurred before the home invasion law's effective date, home invasion should be added as a felony murder predicate offense.

### **Supporting Argument**

While first- and third-degree CSC, which involve sexual penetration, are predicate offenses under the felony murder provision, second-degree CSC, which involves sexual contact, is not a predicate offense. Second-degree CSC is a very serious offense, even though it does not involve sexual penetration. The felony is punishable by up to 15 years' imprisonment and can involve such circumstances as molestation of a minor under 13 years of age, or a minor at least 13 but under 16 who is a member of the offender's household or family, or who is under the offender's authority; sexual contact involving the commission of another felony; sexual contact involving the use of a weapon; or sexual contact with a victim who is mentally incapacitated or physically helpless. A murder that occurred during such a heinous crime should be included in the felony murder law.

**Response:** The bills also should include the offense of assault with intent to commit CSC as a predicate offense in the felony murder law.

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

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

To the extent that the inclusion of second-degree criminal sexual conduct, and home invasion in the first or second degree into the list of crimes that

require mandatory life prison sentences for a murder committed during the commission of the crime increased the length of prison sentences for those offenders, costs for the Department of Corrections would increase. Under current law, an offender who commits murder during second-degree CSC or home invasion of the first or second degree may be sentenced to life, but a life sentence is not mandatory.

In 1994, there were a total of roughly 318 prison commitments for second-degree CSC, and none of those commitments involved offenses resulting in death (although approximately 11 involved serious injury). Assuming that 1994 commitments reflect future commitment patterns, given the anticipated few deaths resulting from a second-degree CSC offense, the addition of a mandatory life sentence for offenders convicted of murder during second-degree CSC is not expected to increase significantly costs of incarceration. (Further, if a murder occurs during a second-degree CSC offense, that offender currently may be subject to a life sentence).

Also in 1994, there were a total of approximately 1,061 prison commitments for breaking and entering of either an occupied or unoccupied building. (Current data do not yet distinguish between the two degrees of home invasion.) Of those commitments, approximately four offenses resulted in death. (In addition, a weapon was used in approximately 122 of the commitments, and 19 commitments involved a serious injury.) Assuming that 1994 commitments reflect future commitment patterns, given the small anticipated number of deaths resulting from a home invasion offense, the addition of a mandatory life sentence for offenders convicted of murder during home invasion is not expected to increase costs of incarceration significantly, especially given that if a murder were to occur during a home invasion offense, that offender currently may be subject to a life sentence.

Finally, to the extent that more clearly defining "arson" in terms of a crime eligible for a mandatory life sentence for offenses during which a murder occurs, resulted in an increased number of mandatory life sentences, costs for the Department could increase. There are no data readily available on the number of arson offenses involving murder that occur annually, or what type of sentences these offenders currently receive.

As a point of information, the table below describes the top 10 most frequent crimes for 1994 life term prison commitments.

Murder - first degree.....	150
Delivery 650 grams controlled substance. ....	21
Robbery - Armed. ....	19
Murder - second degree.....	19
CSC - first degree.....	17
Assaults (include with intent to murder, rob, or do great bodily harm).....	16
Kidnaping. ....	2
Aggravated stalking. ....	1

Data included in this analysis are draft data from the Department of Corrections.

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.