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BOMB/EXPLOSIVES CRIMES: INCREASE PENALTIES

Senate Bill 97 (Substitute H-2) First Analysis (12-10-97)

Sponsor: Sen. Dianne Byrum
Senate Committee: Judiciary
House Committee: Judiciary

THE APPARENT PROBLEM:

Chapter 33 of the Michigan Penal Code deals with explosives and bombs. Provisions in this chapter govern the transportation of explosives on "common carriers" for passengers, sending or placing explosives (or fake devices made to look like explosives) with the intention of causing property damage or hurting or scaring someone (whether or not anyone is actually hurt or anything is actually damaged), and making or having explosives with the intent to use them unlawfully. Generally, violations of these provisions are felonies, with punishments ranging from imprisonment for from five years to life without parole (some felonies do not have specified punishments).

Two years ago, members of an extended family from Battle Creek were stopped by the state police in Lansing on a traffic violation and were subsequently arrested when the police discovered weapons and a bomb that the family members reportedly intended to use to kill someone in Lansing. The police arrested the family members after finding the weapons and bomb, but because the occupants of the van were stopped before they had succeeded in actually placing the bomb, the maximum sentence for transporting the bomb was only five years. Had the family members actually exploded the bomb, on the other hand, the sentence could have been up to life in prison. In light of this incident, legislation has been introduced to update and increase the penalties for bomb (and other) explosives crimes.

THE CONTENT OF THE BILL:

The bill would amend four sections of the "explosives and bombs" chapter (chapter 33) of the Michigan Penal Code (MCL 750.204a, 750.207, 750.209, and 750.210) to add or increase penalties for various explosives crimes, establishing a 5-tiered set of increasing penalties for these crimes based on the amount of property damage or personal injury done by the crime. The bill also would rewrite some of the intent language of this part of the code, and set the penalties for the lowest felony categories (trying to annoy or scare someone with a fake

bomb or an offensive or injurious substance or compound) at a maximum of 5 years imprisonment and/or a fine up to \$3,000.

Fake bombs. Currently, under section 204a of the penal code, a person who sends or transports a device made to look like "an explosive, incendiary device, or bomb," and who does so "with the intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy any other person," is guilty of a felony with unspecified penalties. An offense is committed under this section of the code if the device is sent from or received in this state, and may be prosecuted in the jurisdiction where it was sent or received.

The bill would rewrite this section to add delivery and placing of such devices (in addition to the current sending or transporting), and would omit "molest" from the intent language. Violations would be punishable by imprisonment for up to 5 years and/or a fine up to \$3,000.

Graduated penalties for other felonies. Currently, if someone places gunpowder or any other explosive with the intent to destroy property and if the resulting explosion hurts someone, the person placing the explosive is guilty of a felony punishable by nonparolable life imprisonment. More specifically, the language of the code says that if someone places gunpowder ("or any other explosive") "in, upon, under, against or near to any building, car, vessel or structure" with the intent "to destroy, throw down, or injure the whole or any part" of the building, car, vessel, or structure, and the gunpowder or explosive explodes and hurts someone, it is a nonparolable life felony. (Section 207) If someone places any "foul, offensive, or injurious substance or compound" "in, upon, under, against or near to any building, underground utility facilities, car, motor vehicle, vessel or structure" with the intent (a) "to wrongfully injure, molest or coerce another," (b) to injure another's property or business, or (c) "to molest another in the use, management, conduct, or control of his business or

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property," that person is guilty of a felony punishable by imprisonment for up to 15 years. If the placement of the foul, offensive, or injurious substance ("including those sulphur compounds or other substance commonly added to natural gas for the purpose of creating a distinctive odor associated with gas") is merely with the intent to alarm someone, then the offense is a felony with unspecified penalties. (Section 209) Finally, someone who possesses a bomb with the intent to use it unlawfully is guilty of a felony "punishable by imprisonment for not less than 2 nor more than 5 years." More specifically, the language of the code says that a person who "carries or possesses a bomb or bombshell or any article containing an explosive or combustible substance or foul, offensive or injurious substance or compound" with the intent to use it "unlawfully against the person or property of other [sic]" is guilty of this 2- to 5-year felony.

compounds with the intent to annoy or alarm someone (which, like the fake bomb penalty, would be punishable

The bill would rewrite the language describing these crimes and establish a 5-tier penalty system for each of them. The felonies would be described as follows:

** Placing an explosive substance in or near any real or personal property with the intent either (a) "to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person," or (b) to damage or destroy any real or personal property without the permission of the property owner (or, if the property were public property, without the permission of the governmental agency with authority over the property) [section 207];

** Placing an offensive or injurious substance or compound in or near to any real or personal property with the intent (a) to wrongfully injure or coerce another person, (b) to injure another person's property or business, or (c) to interfere with another person's use, management, conduct, or control of his or her business or property [section 209]; and

** Carrying or possessing an explosive or combustible substance (or a substance or compound that, when combined with another substance or compound, would become explosive or combustible) or an article containing such substances "with intent to use that article, substance, or compound" with the intent either (a) "to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person," or (b) to damage or destroy any real or personal property without the permission of the property owner (or, if the property were public property, without the permission of the governmental agency with authority over the property) [section 210].

The maximum penalties would escalate as property damage or physical injury resulted. Except for the placement of offensive or injurious substances or

by imprisonment for up to five years and/or a fine up to \$3,000), the series of escalating penalties for each of the above felonies would be as follows:

- (1) If there were no property damage and no people were injured, 15 years' imprisonment and/or a \$10,000 fine;
- (2) If there were property damage but no people were injured, 20 years' imprisonment and/or a \$15,000 fine;
- (3) If someone were physically injured, other than serious impairment of a body function, 25 years' imprisonment and/or a \$20,000 fine;
- (4) If someone received a serious impairment of a body function, parolable life imprisonment and/or a \$25,000 fine; and
- (5) If someone were killed, nonparolable life imprisonment and/or a \$40,000 fine.

Effective date. The bill would take effect "90 days after the date of its enactment."

Repealer. The bill would repeal sections of the penal code regarding (a) the placement of explosives with the intent to destroy, but without resulting damage (section 205), (b) intimidation or harassment with fake bombs (section 205a), (c) the placement of explosives with the intent to destroy that results in property damage (section 206), (d) aiding or abetting in placing explosives with the intent to destroy property or injure business (section 208), (e) the possession of bombs with the intent to use them unlawfully (section 210), and (f) the manufacture of explosives with the intent to use them unlawfully (section 211).

Tie-bar. The bill is tie-barred to House Bill 4289, which reportedly will have a Senate substitute that will amend the remaining sections of this chapter of the code (namely, sections 200, 201, 204, 211a) and add a new section 209a.

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted a substitute for Senate Bill 97 that would be paired with House Bill 4289, and that would revise the "explosives and bombs" chapter of the Michigan Penal Code. The House substitute drops amendments to sections 200, 201, 204, and 211a, proposed in the version of the bill as passed by the Senate. (Reportedly these sections will be amended by the Senate substitute for House Bill 4289.)

In addition, the House substitute would do the following:

** Increase the criminal penalties that were included in the Senate-passed version of the bill (S-4) for sending or transporting fake bombs [section 204a] or for placing offensive or injurious substances with the intent to annoy or alarm [section 209(2)] to a maximum of 5 years imprisonment (4 years in S-4) and/or a maximum fine up to \$3,000 (\$2,000 in S-4);

** Amend the intent language in sections 207 and 210 to delete S-4's "unlawful purpose" language (and definition) and substitute "with the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person, or with the intent to damage or destroy any real or personal property without the permission of the property owner or, if the property is public property, without the permission of the governmental agency having authority over that property";

** Decrease the proposed S-4 maximum fines to be added in sections 207, 209, and 210 for violations that caused, respectively, serious impairment of a body function (from \$30,000 to \$25,000) or death (from \$50,000 to \$40,000);

** Include the actual definition of "serious impairment of a body function" instead of just referring to the definition in section 625 of the Michigan Vehicle Code; and

** Tie-bar the bill to House Bill 4289, which would amend the remaining sections of this chapter of the penal code.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

As the incident with the bomb-carrying family from Battle Creek a couple of years ago graphically illustrated, Michigan's current criminal bomb provisions and penalties are both vague and outdated. The bill would provide much-needed updating both of the language and penalties, so that future such incidents, should they occur, could be effectively prosecuted and the violators be appropriately penalized. This would increase the public safety at a time when domestic terrorism, as the Oklahoma City federal building and the New York World Trade Center bombings unfortunately point out, is on the rise. In addition, the proposed five-tier penalty structure would provide appropriate -- and escalating -- penalties for offenses, depending on whether or not property damage occurred or physical injury resulted from the offense, with the most severe

penalties appropriately being reserved for death or serious bodily injury.

Against:

While the new language regarding the placement of explosive substances (section 207) or "offensive or injurious" substances or compounds (section 209) refers to placing them "in or near to any real or personal property," current language refers to the placement "in, upon, under, against or near" to any building, car, motor vehicle, vessel, structure, underground utility facilities, or structure. Does the proposed language cover the same situations as the current language? Additionally, the proposed language in section 210 appears to include two "intents": Carrying or possessing an explosive or combustible substance with the intent to use it with the intent to frighten, etc. people or to damage or destroy property. Is this redundant?

POSITIONS:

A representative from the Prosecuting Attorneys Association of Michigan testified in support of the bill. (12-9-97)

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.