

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

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 97 (as enrolled)
Senate Bill 997 (as enrolled)
House Bill 4289 (as enrolled)
Sponsor: Senator Dianne Byrum (Senate Bills 97 & 997)
Representative Mark Shauer (House Bill 4289)
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 208 of 1998
PUBLIC ACT 209 of 1998
PUBLIC ACT 206 of 1998

Date Completed: 9-15-98

CONTENT

Senate Bill 97 and House Bill 4289 amend Chapter 33 of the Michigan Penal Code, which deals with explosives and bombs, to prescribe specific penalties for some violations that currently are felonies with no specified penalties; establish a graduated range of penalties for certain offenses that involve an intent to cause injury or damage; and repeal several sections. Senate Bill 997 amends the Department of Corrections law to prohibit parole for prisoners sentenced to life imprisonment for a violation of Chapter 33 of the Penal Code.

All of the bills will take effect October 1, 1998. Senate Bill 97 and House Bill 4289 were tie-barred to each other. Senate Bill 997 was tie-barred to the two other bills.

Senate Bill 97 & House Bill 4289

Felonies without Specific Penalties

Several provisions in Chapter 33 designate various offenses as felonies but do not specify a penalty for them. (Under Michigan law, a felony with no otherwise specified penalty is punishable by imprisonment for up to four years, a maximum fine of \$2,000, or both.) Under the bills, these offenses will be punishable by imprisonment for up to five years, a maximum fine of \$3,000, or both.

The provisions in question prohibit a person from doing the following:

- Transporting dynamite, gunpowder, or other explosives between locations within Michigan on a vessel, car, or vehicle that is operated by a common carrier and that carries passengers for hire.
- Ordering, sending, transporting, conveying, or carrying explosive substances, as freight or baggage.
- Sending or transporting a device constructed to represent an explosive, incendiary device, or bomb, with the intent to frighten, intimidate, threaten, harass, or annoy another person. (The bills also include in this offense the delivery or placement of such a device.)
- Placing an offensive or injurious substance or compound in, against, or near a building, vehicle, or vessel, with the intent to alarm any person. (The bills refer to placing such a substance or compound in or near real or personal property with the intent to annoy or alarm.)

Range of Penalties--Intent Offenses

The bills replace current penalties with a graduated range of penalties for various explosives offenses that involve an intent to inflict injury or property damage. Under the bills, depending upon the degree of injury or damage that results, a person will be subject to the following term of imprisonment or fine, or both:

	<u>Imprisonment</u>	<u>Maximum Fine</u>
(except as provided below)	Up to 15 years	\$10,000
Property damage	Up to 20 years	15,000
Physical injury w/o serious impairment	Up to 25 years	20,000
Serious impairment of a body function	Life or any term of years	25,000
Death	Life without parole	40,000

“Serious impairment of a body function” includes, but not is limited to, one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a hand, foot, finger, or thumb, or use of a hand, foot, finger, or thumb.
- Loss of an eye or ear or use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasts more than three days.
- Measurable brain damage or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.

The offenses to which these penalties will apply, and the current penalties, are described below.

The current penalty is imprisonment for up to 15 years for placing any foul, offensive, or injurious substance or compound in, upon, under, against, or near any building, underground utility facilities, motor vehicle, vessel, or structure, with the intent wrongfully to injure another person, injure the property or business of another, or interfere with another person’s use, management, conduct, or control of his or her business or property. (The bills prohibit a person from placing an offensive or injurious substance or compound in or near any real or personal property, with the same intent.)

Currently, it is a felony punishable by imprisonment for up to five years, for a person unlawfully and maliciously to send or deliver to any person any kind of explosive substance or any other noxious or dangerous thing, with the intent to burn, maim, disfigure, disable, or do bodily harm to any person. (The bills refer to sending or delivering to another person any kind

of explosive substance or any other dangerous thing, with the intent described below.)

The current penalty is life in prison without parole

for placing in, upon, under, against, or near any building, car, vessel, or structure, gunpowder or any other explosive substance, with the intent to destroy, thrown down, or injure, and causing injury to any person. (The bills prohibit, instead, placing an explosive substance in or near any real or personal property, with the intent described below.)

The current penalty is imprisonment for at least two but not more than five years for carrying or possessing a bomb or bombshell or any foul, offensive, or injurious substance or compound with intent to use it unlawfully against the person or property of another. (The bills prohibit a person from carrying or possessing an explosive or combustible substance or a substance or compound that when combined with another substance or compound will become explosive or combustible, with the intent described below.)

Currently, it is a felony (without a specified penalty) for a person to make, construct, or possess any device that is designed to explode or will explode upon impact or with the application of heat or a flame, or that is highly incendiary, with the intent to use the device unlawfully against the person or property of another. (The bills prohibit a person from manufacturing, selling, buying, furnishing, or possessing such a device, with the intent described below.)

The preceding four offenses require the intent to frighten, terrorize, intimidate, threaten, harass, injury, or kill any person, or the intent to damage or destroy any real or personal property without the permission of its owner or, if the property is public property, without the permission of the governmental agency having authority over it.

Repeals

The bills repeal sections of Chapter 33 that do the following:

- Make it a felony, punishable by imprisonment for up to 15 years, to place explosives with the intent to destroy but without causing damage (MCL 750.205).
- Make it a felony, without a specified penalty, to deliver or place a device that represents or is presented as an explosive, with the intent to frighten, intimidate, harass, molest, or annoy another person (MCL 750.205a).
- Make it a felony, punishable by imprisonment for up to 25 years, to place explosives and cause property damage, with the intent to destroy (MCL 750.206).
- Make it a felony, punishable by imprisonment for up to 15 years, to aid or abet in the placement of an explosive, with the intent to damage another's property or business, or interfere in another's use or conduct of his or her business (MCL 750.208).
- Make it a felony, punishable by imprisonment for at least two but not more than five years, to manufacture, buy, sell, or possess any dangerous explosive material, with the intent to use it unlawfully against the person or property of another (MCL 750.211).

Senate Bill 997

The Department of Corrections law provides that a prisoner sentenced to imprisonment for life or for a term of years, other than a prisoner sentenced to life imprisonment for first-degree murder or for life or a term of years for a major controlled substance offense, is subject to the jurisdiction of the parole board and may be released on parole after either 10 or 15 years.

(A prisoner sentenced for a crime committed before October 1, 1992, is eligible for parole after serving 10 years; a prisoner sentenced for a crime committed on or after that date is eligible for parole after serving 15 years.)

Under the bill, a prisoner sentenced to imprisonment for life under Chapter 33 of the Michigan Penal Code also will be ineligible for parole.

MCL 750.204a et al. (S.B. 97)
750.200 et al. (H.B. 4289)
791.234 (S.B. 997)

Legislative Analyst: S. Lowe

FISCAL IMPACT

Senate Bill 97 & House Bill 4289

To the extent that the bills amend sentence length by increasing the maximum sentence and imposing fines, and repeal crimes for which commitments to State prison were made during 1996, the fiscal impact of the proposed legislation on State government is indeterminate.

The length of incarceration in a State prison is a function of the minimum sentence imposed by a judge. Based on the average minimum sentence of 1996 new commitments summarized in Table 1, the maximum sentence does not have an impact on the minimum sentence imposed. Assuming that an offender who was convicted under a section that the bills repeal, might instead be charged and convicted under an amended section, a change in maximum sentence will have an indeterminate impact on the amount of time served by the offender.

Table 1 summarizes the maximum length.

<p>Table 1 1996 Commitments</p>

<u>MCL Section</u>	<u>Existing Maximum Sentence</u>	<u>Proposed Maximum Sentence</u>	<u>1996 Commitments</u>	<u>Average Length of Minimum Sentence</u>
750.204	5 Years	Graduated Sentence	0	
750.207	Life	Graduated Sentence	0	
750.211a	4 Years	Graduated Sentence	0	
750.205a	4 Years	Repealed	1	2 Years
750.206	25 Years	Repealed	1	3 Years
750.208	15 Years	Repealed	5	5.4 Years
750.210	5 Years	Graduated Sentence	0	---
750.211	5 Years	Repealed	1	3 Years

Senate Bill 997

Senate Bill 997 requires life sentences without parole for new crimes that would be created under House Bill 4289. To the extent that there are no data to indicate how many people would be convicted of those new crimes, and of those convicted how many would be sentenced to life, the fiscal impact of Senate Bill 997 is indeterminate. On average, assuming an offender sentenced to life without parole serves 50 years, the cost of incarceration would be \$900,000.

Fiscal Analyst: K. Firestone

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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.