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SFA



BILL ANALYSIS

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House Bill 4289 (Substitute H-5 as passed by the House)
Sponsor: Representative Mark Schauer
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 3-2-98

CONTENT

The bill would 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.

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 bill, these offenses would 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 bill also would 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 bill would 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 bill would replace current penalties with a graduated range of penalties for several explosives offenses that involve an intent to inflict injury or property damage. Under the bill, depending upon the degree of injury or damage that resulted, a person would 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	30,000

“Serious impairment of a body function” would include, but not be 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.

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

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 bill would refer to sending or delivering to another person any kind of explosive substance or any other dangerous thing with the intent to injure physically another individual.)

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 bill would prohibit, instead, placing an explosive substance in or near any real or personal property with the intent unlawfully to damage or destroy any real or personal property.)

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 bill would 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 (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 bill would prohibit a person from manufacturing, selling, buying, furnishing, or possessing such a device with the intent to use it unlawfully against another person or the property of another person.)

Repeals

The bill would 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 possess a bomb or explosive with the intent to use it against the person or property of another

(MCL 750.210).

- 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).

MCL 750.200 et al.

Legislative Analyst: S. Lowe

FISCAL IMPACT

To the extent that House Bill 4289 (H-5) would amend sentence length by increasing the maximum sentence and imposing fines, and that it would 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 bill proposes to repeal, could be instead charged and convicted under an amended section, a change in maximum sentence would have an indeterminate impact on the amount of time served by the offender.

Table 1 1996 Commitments				
<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	5, 15, 20, or 25 Years or Life	0	
750.207	Life	15, 20, or 25 Years or Life	0	
750.211a	4 Years	15, 20, or 25 Years or Life	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	Repealed		
750.211	5 Years	Repealed	1	3 Years

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.