

OBSTRUCTION OF JUSTICE

House Bill 5925 as enrolled
Public Act 450 of 2000
Sponsor: Rep. Mike Kowall

House Bill 5928 as enrolled
Public Act 451 of 2000
Sponsor: Rep. Jim Howell

House Bill 5929 as enrolled
Public Act 473 of 2000
Sponsor: Rep. Bruce Patterson

House Bill 5930 as enrolled
Public Act 452 of 2000
Sponsor: Rep. Ken Bradstreet

House Bill 5931 as enrolled
Public Act 498 of 2000
Sponsor: Rep. Gerald Van Woerkom

House Bill 5932 as enrolled
Public Act 453 of 2000
Sponsor: Rep. William O'Neil

Second Analysis (1-30-01)
House Committee: Criminal Law and
Corrections
Senate Committee: Judiciary

THE APPARENT PROBLEM:

The integrity of the judicial system is paramount to its effectiveness. One key component of that integrity is the ability of the system to be able to deter and, if necessary, punish those who would tamper with the fair administration of justice. People need to be able to rely on the ability of the courts to make certain that jurors, witnesses and evidence are not corrupted by outside influences. The court needs to be able provide serious sanctions for those who would attempt to interfere with the judicial process. While incidents of bribery, intimidation, or other efforts to bias the effective administration of justice are by no means rampant in this state, many feel that existing laws to deal with those who try to improperly influence jurors, witnesses, or evidence are not strong enough - both by lacking sufficient penalties and by failing to cover some of the

types of improper behavior that can occur. Legislation has been introduced to expand the laws dealing with tampering with jurors, witnesses and evidence.

THE CONTENT OF THE BILLS:

The bills comprise a package that would clarify existing crimes, enhance penalties, and create new crimes and penalties for actions and behaviors that are directed toward interfering with or obstructing the orderly functions of the criminal justice system. Each new crime or penalty is accompanied by an appropriate amendment to the statutory sentencing guidelines. The bills would contain similar definitions for certain terms: "Retaliate" would be defined to mean committing or attempting to commit a crime against any person,

threatening to kill or injure any person, or threatening to cause property damage. "Threaten or intimidate" would not refer to communication regarding the otherwise lawful access to courts or other branches of government, such as the otherwise lawful filing of a civil action or a police report where the intent is not to harass the other person. "Official proceeding" would include any proceeding before a legislative, judicial, administrative, or other governmental agency or before an official who was authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in that proceeding.

House Bill 5925 would amend the Michigan Penal Code (MCL 750.120a) to establish tiered penalties for attempting to influence jurors by means other than those allowed in appropriate court proceedings. Under current law any attempt (excepting court proceedings and jury deliberations where members of a jury attempt to influence one another by proper means) to influence a juror's decision, whether through intimidation or through argument or persuasion, is a misdemeanor.

Under the bill, attempts to influence a juror through argument or persuasion outside of court proceeding would remain a misdemeanor, and be punishable by up to one year imprisonment and/or a fine of up to \$1,000. The use of intimidation to attempt to influence a juror would be made a felony and could be punished by up to four years imprisonment and/or a fine of up to \$5,000. However, if the intimidation stemmed from a criminal case where the penalty allowed for 10 or more years of imprisonment or imprisonment for life or any terms of years, the penalty would increase to imprisonment for up to 10 years and/or a fine of up to \$20,000. Further, if the intimidation involved the commission or attempted commission of a crime or a threat to kill or injure any person or to cause property damage, the penalty would increase to imprisonment for up to 15 years and/or a fine of up to \$25,000.

The bill would also make it a felony, punishable by up to ten years imprisonment and/or a fine of up to \$20,000, for a person to retaliate, or to attempt or threaten to retaliate, against a person for having performed his or her duties as a juror.

Under the bill, anyone who violated these provisions could also be charged with, convicted of, or punished for any other violation of law that arose from the same transaction. Further, any term of imprisonment that a court ordered for illegally attempting to influence a juror (whether by argument or intimidation) could be

required to be served consecutively to any other violation of law arising out of the same transaction.

House Bill 5925 is tie-barred to House Bill 5928, 5930, and 5932.

House Bill 5928 would amend the Michigan Penal Code (MCL 750.483a) to prohibit and provide penalties for obstructing justice, interfering with police investigations, and concealing evidence.

However, the prohibitions against obstruction of justice or against interference with a witness would not apply where a person's conduct was permitted by statutory privilege.

Obstruction of Justice. The bill would prohibit the following actions:

- 1) Withholding or unreasonably delaying the production of any testimony, information, document, or thing that a court had ordered to be produced following a hearing.
- 2) The unlawful use physical force to prevent or attempt to prevent another person from reporting a crime or attempted crime.
- 3) Retaliating or attempting to retaliate against someone for having reported a crime or attempted crime.

Interfering with a police investigation. The bill would prohibit giving, offering, or promising anything of value to anyone in an effort to influence someone's statement or presentation of evidence to a police officer during a lawful investigation of a crime. The bill would also prohibit the use of threats or intimidation in an effort to influence someone's statement or presentation of evidence to a police officer during a lawful investigation of a crime. In either situation, the bill would provide an affirmative defense where the conduct was lawful and the defendant's sole intention was to encourage, induce, or cause the other person to provide a statement or evidence truthfully. The defendant would have the burden of proving the existence of the defense by a preponderance of the evidence.

Altering or concealing evidence. The bill would prohibit both of the following: 1) providing evidence at an official proceeding with reckless disregard as to the falsity of that evidence; or 2) knowingly and intentionally removing, altering, concealing, destroying, or otherwise tampering with evidence that

was to be offered in a present or future official proceeding.

Penalties. Generally, obstruction of justice and interference with a police investigation would be misdemeanors punishable by imprisonment for up to one year and/or a fine of up to \$1,000. However, where the violation involved the commission or attempted commission of a crime or a threat to kill or injure any person or to cause property damage the crimes would be felonies punishable by imprisonment for up to ten years and/or a fine of up to \$20,000.

Altering or concealing evidence would be a felony punishable by imprisonment for up to four years and/or a fine of up to \$5,000. However, if the violation was committed as part of a criminal case where the maximum term of imprisonment was more than ten years or for life or any term of years, the crime of interfering with a witness, tampering with evidence, or providing false evidence would be punishable by up to ten years imprisonment and/or a fine of up to \$20,000.

Anyone who violated any of the bill's provisions could also be charged with, convicted of, or punished for any other violation of law that arose from the same transaction. If a defendant was convicted of a violation of the bill's provisions, the term of imprisonment for that crime could be ordered to be served consecutively to any term of imprisonment imposed for any other crime, including any violation of law those that arose from the same transaction as the violation of the bill.

House Bill 5928 is tie-barred to House Bill 5925, 5930, and 5932.

House Bill 5929, which would not take effect unless House Bill 5928 was also enacted, would amend the Code of Criminal Procedure's statutory sentencing guidelines (MCL 777.16f) to include retaliating for reporting a crime - a Class D crime against a person with a ten-year statutory maximum; interfering with a police investigation by committing a crime or threatening to kill or injure - a Class F crime against a person with a ten-year statutory maximum; tampering with evidence - a Class F crime against public order with a four-year statutory maximum; tampering with evidence in a case punishable by more than 10 years - a Class D crime against public order with a ten-year statutory maximum.

House Bill 5930 would amend the Michigan Penal Code (MCL 750.122) to prohibit and penalize tampering with witnesses. The bill would prohibit

three types of tampering with witnesses: through the use of threats (intimidation), by offering money or other items of value (bribery), or by interference. The bill would also prohibit a person from retaliating, attempting to retaliate, or threatening to retaliate against a person for having been a witness in an official proceeding. The bill's provisions would apply where the defendant knew or had reason to know that the person could be a witness at any official proceeding, without regard to whether or not the official proceeding actually took place or was pending, or whether the person had been subpoenaed or otherwise ordered to appear at the proceeding.

Bribery. The bill would prohibit giving, promising, or offering anything of value to an individual in order to interfere with the testimony of any person in a present or future official proceeding. More specifically, the bill would prohibit bribing a person to discourage attendance, testimony, or the provision of information at a present or future official proceeding; to influence testimony; or to encourage the avoidance of legal process or the provision false testimony.

Intimidation. It would be illegal for a person to threaten or intimidate a witness in order to discourage or attempt to discourage his or her attendance, testimony, or the provision of information at a present or future official proceeding; to influence or attempt to influence testimony; or to encourage or attempt to encourage the avoidance of legal process or the provision false testimony.

Interfering with a witness. The bill would also prohibit purposely impeding, interfering with, preventing, or obstructing, or attempting to impede, interfere with, prevent, or obstruct the ability of a witness to attend, testify, or provide information in or for an official proceeding.

Exceptions. The bill would provide an affirmative defense to charges of bribery or intimidation of a witness where the conduct was lawful and the defendant's sole intention was to encourage, induce, or cause the other person to provide a statement or evidence truthfully. The defendant would have the burden of proving the existence of the defense by a preponderance of the evidence.

The reimbursement or payment for reasonable costs for a witness to provide a statement, to testify truthfully, or to provide truthful information at an official proceeding as allowed under the Uniform Condemnation Procedures Act, the Revised Judicature Act, or the

court rules would not be considered to be a violation of the bill's bribery prohibitions.

The bribery and intimidation provisions of the bill would not apply to lawful conduct by an attorney in the performance of his or her duties, such as advising a client, nor would they apply to other lawful conduct or communications that are permitted by statute or other lawful privilege.

Penalties. Tampering with a witness would be a felony, generally punishable by imprisonment for up to four years and/or a fine of up to \$5,000. However, if the violation was committed as part of a criminal case where the maximum term of imprisonment was more than ten years or was for life or any term of years, the crime of tampering with a witness would be punishable by up to ten years imprisonment and/or a fine of up to \$20,000. Furthermore, if the violation involved the commission or attempted commission of a crime or a threat to kill or injure any person or to cause property damage, the penalty would increase to imprisonment for up to 15 years and/or a fine of up to \$25,000. Retaliation against a witness would be a felony, punishable by up to ten years imprisonment and/or a fine of up to \$20,000.

Anyone who violated any of the bill's provisions could also be charged with, convicted of, or punished for any other violation of law that arose during the same incident as the witness tampering. Furthermore, if a defendant was convicted of a violation of the bill's provisions, the term of imprisonment for that crime could be ordered to be served consecutively to any term of imprisonment imposed for any other crime, including any violation of law those that arose from the same transaction as the violation of the bill.

House Bill 5930 is tie-barred to House Bill 5925, 5928, and House Bill 5932.

House Bill 5931, which would not take effect unless House Bill 5925, 5930, and 5932 were also enacted, would amend the Code of Criminal Procedure's statutory sentencing guidelines (MCL 777.16f) to include bribing a juror or other person in a case punishable by more than 10 years - a Class D crime against a public trust with a ten-year statutory maximum; juror intimidation - a Class F crime against public order with a four-year statutory maximum; juror intimidation in a case punishable by more than 10 years - a Class D crime against public order with a ten-year statutory maximum; juror intimidation by committing a crime or threatening to kill or injure - a Class C crime against a person with a 15 year statutory

maximum; retaliation against a juror - a Class D crime against a person with a ten-year statutory maximum; bribing or intimidating witnesses - a Class F crime against public order with a 4 year statutory maximum; bribing or intimidating witnesses in a case punishable by more than 10 years - a Class D crime against public order with a ten-year statutory maximum; intimidating witness by committing a crime or threatening to kill or injure - a Class C crime against a person with a 15 year statutory maximum; and retaliating against a witness - a Class D crime against a person with a ten-year statutory maximum.

House Bill 5932 would amend the Michigan Penal Code (MCL 750.119) to specify penalties for the existing crime of bribing or attempting to bribe an appraiser, receiver, trustee, administrator, executor, commissioner, auditor, juror, arbitrator, or referee in order to influence his or her decisions or opinions regarding any matter pending before a court or inquest, or in the decision that the individual was appointed or chosen to make. Bribing or attempting to bribe a juror or other person would continue to be a felony punishable by imprisonment for up to four years and/or a fine of up to \$5,000. However, if the violation were committed in a criminal case where the maximum term of imprisonment for the underlying crime was more than ten years, or was for life or any term of years, the bribery crime could be punished by up to ten years imprisonment and/or a fine of up to \$20,000.

Anyone who violated any of the bill's provisions could also be charged with, convicted of, or punished for any other violation of law that arose during the same incident as the witness tampering. Furthermore, if a defendant was convicted of a violation of the bill's provisions, the term of imprisonment for that crime could be ordered to be served consecutively to any term of imprisonment imposed for any other crime, including any violation of law those that arose from the same transaction as the violation of the bill.

House Bill 5932 is tie-barred to House Bill 5925, 5928, and 5930.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have an indeterminate fiscal impact on state and local government. The fiscal impact would depend upon how many convictions were made under the bills, the sentence types and lengths of stay for convicted offenders, and the amounts of penal fine revenue collected. (1-30-01)

ARGUMENTS:

For:

The integrity of jurors, witnesses, and evidence involved in criminal and civil court cases are a cornerstone of an effective judicial process. There are enough factors involved in attempting to get to the truth through an adversarial system of justice without having to worry about witnesses being bribed, evidence being destroyed, or jurors being threatened. The bills, by prohibiting such egregious conduct and providing stiff penalties, will help to promote confidence in the overall integrity of the judicial process.

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#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.