

Senate Fiscal Agency  
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**SFA**



**BILL ANALYSIS**

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Senate Bill 528 (as enrolled)  
House Bill 4403 (as enrolled)  
Sponsor: Senator Mat J. Dunaskiss (Senate Bill 528)  
Representative Michael Kowall (House Bill 4403)  
Senate Committee: Judiciary  
House Committee: Criminal Law and Corrections

**PUBLIC ACT 67 of 1999**

**PUBLIC ACT 28 of 1999**

Date Completed: 7-22-99

### **RATIONALE**

Michigan law forbids the possession or delivery of alcohol, drugs, or weapons in a prison or jail. Under Public Act 17 of 1909, it is a felony, punishable by up to five years' imprisonment and/or a maximum fine of \$1,000, for prisoners to possess or for anyone to furnish prisoners with weapons, alcohol, or controlled substances in a State prison facility. Under Public Act 7 of 1981, however, the same violation in a jail is a misdemeanor, punishable by up to one year's imprisonment and/or a maximum fine of \$500.

As the result of a 1996 incident in which a visitor smuggled marihuana to an Oakland County jail inmate, the late sheriff of Oakland County reportedly urged that the penalty for contraband in jails be made uniform with that for contraband in prisons. Some believe that the misdemeanor penalty in Public Act 7 should be elevated to a felony and that the offense should be included in sentencing guidelines.

### **CONTENT**

**Senate Bill 528 and House Bill 4403 amended, respectively, the Code of Criminal Procedure and Public Act 7 of 1981, to increase the penalty for violations of Public Act 7 and include the offenses in the Code of Criminal Procedure's sentencing guidelines provisions.** The bills will take effect on August 1, 1999, and Senate Bill 528 was tie-barred to House Bill 4403.

### **House Bill 4403**

Public Act 7 prohibits all of the following:

- Bringing into a jail, into a building appurtenant to a jail, or onto grounds used for jail purposes a weapon or other item that may be used to injure a prisoner or other person, or to assist a prisoner to escape.
- Selling or furnishing to a prisoner a weapon or other item that may be used to injure a prisoner or other person, or to assist a prisoner to escape, or disposing of a weapon in a manner that allows a prisoner access to it.
- Unless authorized by the jail's chief administrator, possession or control by a prisoner of a weapon or item that may be used to injure a prisoner or other person, or to assist a prisoner to escape.
- Except as allowed for medical or religious purposes, bringing alcohol or a controlled substance into a jail, into a building appurtenant to a jail, or onto grounds used for jail purposes; selling or furnishing alcohol or a controlled substance to a prisoner; or disposing of alcohol or a controlled substance in a manner that allows a prisoner access to it.
- Except as allowed for medical or religious purposes, possession or control by a prisoner of alcohol or a controlled substance.

A violation of the Act is a misdemeanor, punishable by up to one year's imprisonment, a maximum fine of \$500, or both. Under the bill, a violation will be a felony, punishable by up to five years' imprisonment, a maximum fine of \$1,000, or both. The bill also specifies that if a violation involves a controlled substance and is punishable by imprisonment for more than five years under the Public Health Code, the offender may not be prosecuted under Public Act 7 for that violation.

### **Senate Bill 528**

The bill added to the Code of Criminal Procedure's sentencing guidelines provisions the felony violations of Public Act 7 of 1981, as amended by House Bill 4403. A violation of the Act's prohibition involving weapons in jails will be categorized as a Class E felony against public safety, with a statutory maximum penalty of five years' imprisonment. A violation of the Act's prohibition involving alcohol and drugs in jails will be categorized as a Class H felony against public safety, with a statutory maximum penalty of five years' imprisonment.

MCL 777.17 (S.B. 528)  
801.265 (H.B. 4403)

## **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**

Currently, the penalty for delivering some types of contraband to a jail inmate is much more lenient than the penalty for an identical offense relating to a prison inmate, even though a jail prisoner may be accused or convicted of a serious felony. Even worse, perhaps, the penalty for possession of certain types and amounts of drugs by a jail inmate, or delivering them to a jail inmate, can be less than for the same offense committed outside of the jail. Someone who smuggles contraband to a jail inmate should not be subject to a lesser charge compared with someone who smuggles contraband to an inmate in a State prison facility, or even someone who delivers an illegal substance to a person outside of a jail or prison. A law, such as the jail contraband law, that actually has a lower penalty for a crime committed in a jail than for the same crime committed in a prison or in the community, may serve to create a dangerous situation and set an undesirable precedent.

The penalties for delivering contraband to prisoners should be the same regardless of where a legally incarcerated inmate is housed. Jails sometimes house State prisoners under contract with the Department of Corrections (DOC), and many jails, especially those in the State's larger counties, house DOC prisoners waiting to be taken to State prison facilities or to a court proceeding. Also, jails hold defendants before or during their criminal trials; these defendants may be accused of felonies and designated for State prison upon their conviction and sentencing.

Further, the jail contraband provision is even more lenient than penalties for delivery of some substances within the general public. Delivery of marijuana, for instance, typically is a four-year felony, while delivery of contraband, including

marijuana, in prison is a five-year felony. Delivery of marijuana to jail inmates under Public Act 7, however, is a misdemeanor with a maximum sentence of one year and/or a fine of up to \$500. The penalties for delivering or possessing contraband to legally incarcerated inmates should be more, not less, severe than for delivering the same substance to a person living freely in the community. Further, since the controlled substance provisions of the Michigan Public Health Code, in some instances, have more severe penalties than the penalty for the delivery of contraband in a jail or prison, in those cases a prosecution for drugs should be pursued under the Public Health Code and not under the jail contraband laws.

### **Opposing Argument**

Under the House bill, a prisoner caught with a single beer could face up to five years in prison and a fine of up to \$1,000. That penalty seems a bit extreme for an activity that, outside of jail, would be perfectly legal. Compounding the problem is the fact that jails hold people awaiting trial, who may, in fact, be innocent of the charges against them. Under the bill, an innocent person held in jail pending trial could wind up being sentenced to five years in prison for an action that, committed outside the jail, would not be a criminal offense. Surely, preserving the constitutional right of all persons to be considered innocent until proven guilty is more important than forestalling the remote likelihood that an innocent prisoner might pose a physical threat to his or her jailers by possessing an otherwise legal substance, such as beer. At the very least, alcohol possession should be kept as a misdemeanor to prevent possible miscarriages of justice.

In addition, increasing sentences generally has a poor track record in deterring what is considered undesirable behavior, since people tend to assume that they will not get caught. It is unclear whether the bills will pose any deterrent to the targeted behavior, although they clearly pose problems.

**Response:** A prisoner who is under the influence of drugs or alcohol and who is involved in smuggling items into jail, regardless of whether he or she has already been convicted of a crime, can pose a danger to jail personnel and other inmates.

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

Senate Bill 528 and House Bill 4403 will have an indeterminate fiscal impact on State and local government.

The bills increase the maximum sentence and add five crimes not previously enumerated in the sentencing guidelines. To the extent that, as a result of enumeration in the sentencing guidelines, an

offender convicted under one of these sections receives a longer or a shorter sentence, costs to State and local government will increase or decrease. There are no data available to indicate how many people are convicted each year of bringing a weapon to jail, furnishing a weapon to a prisoner in jail, possession of a weapon by a prisoner, furnishing contraband to a prisoner in jail, or possession of contraband by a prisoner in a jail.

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.