

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

House Bill 5925 (Substitute H-2 as passed by the House)
House Bill 5928 (Substitute H-2 as passed by the House)
House Bill 5929 (Substitute H-1 as passed by the House)
House Bill 5930 (Substitute H-2 as passed by the House)
House Bill 5931 (Substitute H-1 as passed by the House)
House Bill 5932 (Substitute H-2 as passed by the House)
Sponsor: Representative Mike Kowall (House Bill 5925)
Representative Jim Howell (House Bill 5928)
Representative Bruce Patterson (House Bill 5929)
Representative Ken Bradstreet (House Bill 5930)
Representative Gerald Van Woerkom (House Bill 5931)
Representative William O'Neil (House Bill 5932)

House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

Date Completed: 11-29-00

CONTENT

The bills would amend the Michigan Penal Code and the Code of Criminal Procedure to specify or revise penalties for various obstruction of justice violations and to include those offenses in the sentencing guidelines. As a rule, the penalties would be higher if a violation involved criminal activity or threats, or if a violation were committed in a criminal case for which the maximum term was more than 10 years. The bills would address all of the following:

- Juror intimidation and retaliation against a juror.
- Withholding or unreasonably delaying the production of testimony or other information; preventing or interfering with another person's reporting a crime; and retaliating against another person for having reported or attempted to report a crime.
- Interfering with a police investigation.
- Altering or concealing evidence.
- Interfering with a witness and retaliating against a witness.
- Bribing a juror or other decision-maker.

Each of the bills that would provide for penalties state that it would not prohibit a person from being charged with, convicted of, or punished for any other violation of law, including any violation arising out of the same transaction as the violation of the bill. The court could order a term of imprisonment imposed for a violation of the bill to be served consecutively to a

term of imprisonment imposed for any other violation of law, including any violation arising out of the same transaction as the violation of the bill.

The bills would take effect on January 1, 2001. House Bills 5925 (H-2), 5928 (H-2), 5930 (H-2), and 5932 (H-2) are tie-barred to each other. House Bill 5929 (H-1) is tie-barred to House Bill 5928. House Bill 5931 (H-1) is tie-barred to House Bill 5930.

House Bill 5925 (H-2)

Juror Intimidation

The bill would amend the Michigan Penal Code to revise the penalties for intimidation of a juror. Currently, willfully attempting to influence the decision of a juror by means of intimidation or by means of argument or persuasion, other than as part of the proceedings in open court in the trial of the case, is a misdemeanor with no specified penalty. (In cases in which there is no specified penalty, a misdemeanor is punishable by up to 90 days' imprisonment and/or a maximum fine of \$500.)

Under the bill, willfully attempting to influence the decision of a juror in any case by argument or persuasion, other than as part of the proceedings in open court in the trial of the case, would be a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$500, or both. Willfully attempting to influence the decision of a juror in any case by intimidation, other than as part of

the proceedings in open court in the trial of the case, would be a felony punishable by up to four years' imprisonment, a maximum fine of \$3,000, or both. If the intimidation involved committing or attempting to commit a crime or a threat to kill or cause serious physical injury to any person, the violation would be punishable by up to 15 years' imprisonment, a maximum fine of \$5,000, or both. As under current law, the bill would not prohibit any deliberating juror from attempting to influence other members of the same jury by any proper means.

Retaliating against a Juror

The bill specifies that retaliating or attempting or threatening to retaliate against another person for having performed his or her duties as a juror would be a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. ("Retaliate" would mean committing or attempting to commit a crime against any person or threatening to kill or injure any person or threatening to cause property damage.)

House Bill 5928 (H-2)

Obstructing Justice

The bill would amend the Michigan Penal Code to prohibit a person from doing any of the following:

- Withholding or unreasonably delaying the production of any testimony, information, document, or thing after the court had ordered it to be produced following a hearing.
- Preventing or attempting to prevent, through the unlawful use of physical force, another person from reporting a crime committed or attempted by another person.
- Retaliating or attempting to retaliate against another person for having reported or attempted to report a crime committed or attempted by another person. ("Retaliate" would mean committing or attempting to commit a crime against any person or threatening to kill or injure any person or threatening to cause property damage.)

A violation of any of those prohibitions would be a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$500, or both. If the violation involved committing or attempting to commit a crime or a threat to kill or injure any person or to cause property damage, the violation would be a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

Interfering with a Police Investigation

The bill would prohibit both of the following:

- Giving, offering to give, or promising anything of value to any person to influence a person's statement to a police officer conducting a lawful investigation of a crime or the presentation of evidence to a police officer conducting a lawful investigation of a crime.
- Threatening or intimidating any person to influence a person's statement to a police officer conducting a lawful investigation of a crime or the presentation of evidence to a police officer conducting a lawful investigation of a crime.

A violation of either of those prohibitions would be a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$500, or both. If the violation involved committing or attempting to commit a crime or a threat to kill or injure any person or to cause property damage, the violation would be a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. It would be an affirmative defense, for which the defendant would have the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to provide a statement or evidence truthfully.

The bill states that "threaten or intimidate" would not mean a communication regarding the otherwise lawful access to courts or other branches of government, such as the lawful filing of any civil action or police report whose purpose is not to harass the other person in violation of Section 2907 of the Revised Judicature Act. (That section provides civil and criminal sanctions for a malicious prosecution or action.)

Altering or Concealing Evidence

The bill would prohibit a person from doing either of the following:

- Knowingly and intentionally removing, altering, concealing, destroying, or otherwise tampering with evidence to be offered in a present or future official proceeding.
- Offering evidence at an official proceeding that he or she recklessly disregarded as false.

A violation would be a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. If the violation were committed in a criminal case for which the maximum term of imprisonment for the violation was more than 10 years, or the violation were punishable by imprisonment for life or any term of years, the violation of the bill would be punishable by up to 10 years' imprisonment.

"Official proceeding" would mean a proceeding heard

before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding.

Exceptions

The bill's provisions concerning withholding or unreasonably delaying testimony or information, threatening or intimidating a person to influence a person's statement or the presentation of evidence to a police officer, and offering evidence recklessly disregarded as false would not apply to any of the following:

- The lawful conduct of an attorney in the performance of his or her duties, such as advising a client.
- The lawful conduct or communications of a person as permitted by statute or other lawful privilege.

House Bill 5929 (H-1)

The bill would amend the Code of Criminal Procedure to include all of the following offenses proposed by House Bill 5928 (H-2) in the sentencing guidelines:

- Obstructing justice, which would be categorized as a Class F felony against a person, with a statutory maximum sentence of four years' imprisonment.
- Interfering with a police investigation, which would be categorized as a Class F felony against a person, with a statutory maximum sentence of four years' imprisonment.
- Interfering with a witness or altering or concealing evidence, which would be categorized as Class F felony against the public order, with a statutory maximum sentence of four years' imprisonment.
- Interfering with a witness or altering or concealing evidence in a criminal case punishable by more than 10 years' imprisonment, which would be categorized as a Class D felony against the public order, with a statutory maximum sentence of 10 years' imprisonment.

House Bill 5930 (H-2)

Interfering with a Witness

The bill would amend the Michigan Penal Code to prohibit a person from giving, offering to give, or promising anything of value to an individual to accomplish any of the following purposes:

- Discouraging any individual from attending a

present or future official proceeding as a witness, testifying at a present or future official proceeding, or giving information at a present or future official proceeding.

- Influencing any individual's testimony at a present or future official proceeding.
- Encouraging any individual to avoid legal process, to withhold testimony, or to testify falsely in a present or future official proceeding.

Those prohibitions would not apply to the reimbursement or payment of reasonable costs for any witness to provide a statement, testify truthfully, or provide truthful information in an official proceeding as provided under Section 16 of the Uniform Contemnation Procedures Act or Section 2164 of the Revised Judicature Act (both of which provide for the payment of expert witness fees), or court rule.

The bill also would prohibit any of the following by threat or intimidation:

- Discouraging or attempting to discourage any individual from attending a present or future official proceeding as a witness, testifying at a present or future official proceeding, or giving information at a present or future official proceeding.
- Influencing or attempting to influence testimony at a present or future official proceeding.
- Encouraging or attempt to encourage any individual to avoid legal process, withhold testimony, or testify falsely in a present or future official proceeding.

(The terms "official proceeding" and "threaten or intimidate" would be defined as in House Bill 5928 (H-2).)

It would be an affirmative defense, for which the defendant would have the burden of proof by a preponderance of the evidence, for any of the above violations, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify or provide evidence truthfully.

The above prohibitions would not apply to the lawful conduct of an attorney in the performance of his or her duties, such as advising a client, or the lawful conduct or communications of a person as permitted by statute or other lawful privilege.

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

House Bill 5932 (H-2)

A violation of any of the prohibitions outlined above would be a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. If the violation were committed in a criminal case for which the maximum term of imprisonment was more than 10 years, or the violation were punishable by imprisonment for life or any term of years, the violation of the bill would be punishable by up to 10 years' imprisonment. If the violation were a threat to kill or cause serious physical injury to any person, it would be punishable by up to 20 years' imprisonment, a maximum fine of \$5,000, or both.

Retaliating against a Witness

Retaliating, attempting to retaliate, or threatening to retaliate against another person for having been a witness in an official proceeding would be a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. ("Retaliate" would mean committing or attempting to commit a crime against any person or threatening to kill or injure any person or threatening to cause property damage.)

Scope of the Bill

The bill states that it would apply regardless of whether an official proceeding actually took place or was pending or whether the individual had been subpoenaed or otherwise ordered to appear at the official proceeding, if the person knew or had reason to know the other person could be a witness at any official proceeding.

House Bill 5931 (H-1)

The bill would amend the Code of Criminal Procedure to include both of the following offenses proposed by House Bill 5930 (H-2) in the sentencing guidelines:

- Bribing or intimidating a witness, which would be categorized as a Class B felony against a person, with a statutory maximum sentence of 20 years' imprisonment.
- Retaliating against a witness, which would be categorized as a Class F felony against a person, with a statutory maximum sentence of four years' imprisonment.

House Bill 5928 (H-2) & 5929 (H-1)

The bills would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many offenders would be found guilty of the new crimes of

The bill would amend the Michigan Penal Code to specify penalties for the felony of bribing a juror, appraiser, receiver, trustee, administrator, executor, commissioner, auditor, arbitrator, or referee. Currently, corrupting or attempting to corrupt any of those persons by giving, offering, or promising any gift or gratuity with intent to bias his or her opinion or influence his or her decision regarding any pending matter is a felony with no specified penalty. (In cases in which there is no specified penalty, a felony is punishable by up to four years' imprisonment and/or a maximum fine of \$2,000.)

A violation would continue to be punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. Under the bill, however, if the violation were committed in a criminal case for which the maximum term of imprisonment for the violation was more than 10 years' imprisonment or that was punishable by imprisonment for life or any term of years, the violation would be a felony punishable by up to 10 years' imprisonment.

MCL 750.120a (H.B. 5925) Legislative Analyst: P. Affholter
Proposed MCL 750.483a (H.B. 5928)
MCL 777.16x (H.B. 5929)
Proposed MCL 750.122 (H.B. 5930)
MCL 777.16f (H.B. 5931)
MCL 750.119 (H.B. 5932)

FISCAL IMPACT

House Bill 5925 (H-2)

The bill would have an indeterminate fiscal impact on State and local government.

There are no statewide data available to indicate how many offenders a year are convicted of the misdemeanor offense of influencing the decision of a juror, nor are there data to suggest how many offenders may be convicted of using intimidation or threats to influence a jury. Assuming that two offenders a year would be convicted of each of the proposed felonies and each would serve a minimum sentence equal to two-thirds of the maximum sentence, given an average annual cost of incarceration of \$22,000, costs for incarceration could increase \$558,000.

obstructing justice, interfering with a police investigation, or interfering with a witness or evidence, all of which would be incorporated into the sentencing guidelines as a Class F felonies with a sentencing guidelines minimum range between 0-3 months and 17-30 months. Nor are there data available to indicate how many offenders would be

found guilty of the new crime of interfering with a witness or evidence in a case punishable by imprisonment for more than 10 years, which would be a Class D felony with a sentencing guidelines minimum range between 0-6 months and 43-76 months. Assuming that two offenders a year would be convicted of each of these crimes and that they would serve an incarcerative sentence at the high end of the sentencing guidelines minimum range, costs for the State could increase by \$610,000. However, local government would be responsible for the cost of incarceration for offenders receiving a minimum sentence of less than 18 months.

House Bills 5930 (H-3) & 5931 (H-1)

The bills would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many offenders would be found guilty of the new crimes of retaliating against a witness and bribing a witness. Retaliating against a witness would be incorporated into the sentencing guidelines as a Class F felony with a sentencing guidelines minimum range between 0-3 months and 17-30 months, and bribing or intimidating a witness would be a Class B felony with a sentencing guidelines minimum range between 0-18 months and 117-160 months. Local units of government incur the cost of incarceration for offenders sentenced for less than 18 months, while the State incurs the cost of sentences longer than 18 months and felony probation.

House Bill 5932 (H-2)

The bill would have an indeterminate fiscal impact on State and local government.

According to the 1997 and 1998 Department of Corrections Statistical Report, there were no convictions for corrupting an appraiser, receiver, trustee, administrator, executor, commissioner, auditor, juror, arbitrator, or referee. To the extent that the bill would increase the maximum sentence for this offense when the violation was committed in a criminal case for which the maximum term of imprisonment was greater than 10 years and the bill would allow for consecutive sentences arising out of the same crime, length of sentence could increase. To the extent that no offenders were convicted of this offense for the two years for which data are available, the added penalties would not increase length of stay for offenders.

Fiscal Analyst: K. Firestone

S9900\5925sa

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.