

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 5928 (Substitute S-2 as reported)
House Bill 5929 (Substitute S-1 as reported)
House Bill 5930 (Substitute S-1 as reported)
House Bill 5931 (Substitute S-2 as reported by the Committee of the Whole)
House Bill 5932 (Substitute S-1 as reported)

Sponsor: 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

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.

House Bill 5928 (S-2) would amend the Michigan Penal Code to prohibit a person from withholding or refusing to produce testimony or other information after the court had ordered it to be produced; preventing or attempting to prevent another person from reporting a crime; or retaliating against another person for reporting a crime. The bill also would prohibit: 1) giving, offering, or promising anything of value to influence a person's statement or presentation of evidence to a police officer investigating a crime, and 2) threatening or intimidating any person to influence a person's statement or presentation of evidence to a police officer. A violation would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. If the violation involved committing or attempting to commit a crime or a threat to kill or injure a person or cause property damage, the violation would be a felony subject to 10 years and/or \$20,000.

The bill would prohibit a person from tampering with evidence to be offered in an official proceeding, and offering evidence that he or she recklessly disregarded as false. A violation would be a felony punishable by up to four years' imprisonment and/or a maximum fine of \$5,000. 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 imprisonment for life or any term of years, the violation of the bill would be punishable by up to 10 years and/or \$20,000.

House Bill 5929 (S-1) would amend the Code of Criminal Procedure to include the offenses proposed by House Bill 5928 (S-2) in the sentencing guidelines. In cases involving felony violations, retaliating for reporting a crime would be a Class D felony against a person, and interfering with a police investigation by committing a crime or threatening to kill or injure would be a Class F felony against a person. Tampering with evidence would be a Class F felony against the public order, and tampering with evidence in a criminal case punishable by more than 10 years' imprisonment would be a Class D felony against the public order.

House Bill 5930 (S-1) would amend the Penal Code to prohibit a person from giving, offering, or promising anything of value to an individual to accomplish any of the following: 1) discouraging any individual from attending an official proceeding as a witness, testifying at an official proceeding, or giving information at an official proceeding; 2) influencing any individual's testimony at an official proceeding; or 3) encouraging any individual to avoid legal process, withhold testimony, or testify falsely. The bill also would prohibit accomplishing or attempting any of those actions by threat or intimidation. The bill would prohibit willfully impeding, interfering with, preventing, or obstructing the ability of a witness to attend, testify, or provide information in or for an official proceeding (or willfully attempting to do so).

A violation would be a felony punishable by up to four years' imprisonment and/or a maximum fine of \$5,000.

If the violation were committed in a criminal case for which the maximum term of imprisonment was more than 10 years, or the violation was punishable by imprisonment for life or any term of years, the violation of the bill would be punishable by up to 10 years and/or \$20,000. 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 and/or \$25,000.

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 10 years' imprisonment and/or a maximum fine of \$20,000.

House Bill 5931 (S-1) would amend the Code of Criminal Procedure to include in the sentencing guidelines offenses proposed by House Bill 5925 (S-1). Juror intimidation would be a Class F felony against the public order; juror intimidation in a case punishable by more than 10 years' imprisonment would be a Class D felony against the public order; juror intimidation by crime or threat to kill or injure would be a Class C felony against a person; and retaliation against a juror would be a Class D felony against a person.

The bill also would include offenses proposed by House Bills 5930 (S-1) and 5932 (S-1) in the sentencing guidelines. Bribing or intimidating a witness would be a Class F felony against the public order; bribing or intimidating a witness in a case punishable by more than 10 years' imprisonment would be a Class D felony against the public order; intimidating a witness by threat to kill or injure would be a Class C felony against a person; and retaliating against a witness would be a Class D felony against a person. Bribing a juror or other person in a case punishable by more than 10 years' imprisonment, as proposed by House Bill 5932 (S-1), would be a Class D felony against the public trust.

House Bill 5932 (S-1) would amend the 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 to influence his or her decision is a felony with no specified penalty (which means that it is punishable by up to four years' imprisonment and/or a maximum fine of \$2,000).

Under the bill, a violation would be punishable by up to four years' imprisonment and/or a maximum fine of \$5,000. 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 of the bill would be a felony punishable by up to 10 years and/or \$20,000.

Tie-Bars: House Bills 5928 (S-2), 5930 (S-1), and 5932 (S-1) are tie-barred to each other and to House Bill 5925. House Bill 5929 (S-1) is tie-barred to House Bill 5928. House Bill 5931 (S-1) is tie-barred to House Bills 5925, 5930, and 5932.

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)

Legislative Analyst: P. Affholter

FISCAL IMPACT

All of the bill 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 interfering with a police investigation by committing a crime or threatening to kill or injure, or tampering with evidence, both 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 retaliating for reporting a crime or tampering with evidence in a case punishable by imprisonment for more than 10 years, both of which would be Class D felonies 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 would serve an incarcerative sentence at the high end of the sentencing guidelines minimum range, given an average annual cost of incarceration of \$22,000, costs for the State could increase by \$777,000.

There are no data available to indicate how many offenders would be found guilty of retaliating against a witness or bribing or intimidating witness in a case punishable by imprisonment for more than 10 years, each of which would be a Class D felony with a minimum range between 0-6 months and 43-76 months; bribing or intimidating a witness, which would be a Class F felony with a minimum range between 0-3 months and 17-30 months; or intimidating a witness by threatening to kill or injure, which would be a Class C felony with a minimum range between 0-11 and 62-114 months. Assuming that two offenders a year would be convicted of each of these crimes and would serve a sentence at the high end of the guidelines range, costs to the State could increase \$1,086,000.

Also, there are no data available to indicate how many offenders would be convicted of either bribing or intimidating a juror in case punishable by more than 10 years, or juror retaliation, which would be Class D felonies with a minimum range between 0-6 months and 43-76 months; juror intimidation, which would be a Class F felony with a minimum range between 0-3 months and 17-30 months; or juror intimidation by committing a crime or threatening to kill or injure, which would be a Class C felony with a minimum range between 0-11 and 62-114 months. According to the 1998 Department of Corrections Statistical Report, there were no convictions for bribing a juror or other person, a crime already incorporated in the sentencing guidelines. Assuming that two offenders a year would be convicted of each of these crimes and would serve a sentence at the high end of the guidelines range, costs to the State could increase \$1,364,000.

In all of the cases described above, local government would receive the fine revenue or incur the cost of incarceration for offenders sentenced at the low end of the guidelines range.

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 maximum sentence for this offense would be increased when the violation was committed in a criminal case for which the maximum term of imprisonment was greater than 10 years, and consecutive sentences would be allowed for offenses arising out of the same criminal activity, 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 offenders' length of stay.

Date Completed: 12-5-00

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.