



Senate Fiscal Agency
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Senate Bill 1287 (Substitute S-1 as passed by the Senate)
Senate Bill 1288 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Jud Gilbert, II (S.B. 1287)
 Senator Gerald Van Woerkom (S.B. 1288)
Committee: Judiciary

Date Completed: 6-14-04

RATIONALE

Chapter 33 (Explosives, Bombs, and Harmful Devices) of the Michigan Penal Code prohibits manufacturing, buying, selling, furnishing, or possessing any device that is designed to explode or that will explode on impact or with the application of heat or a flame or that is highly incendiary. That prohibition would seem to cover activities involving a makeshift incendiary device, such as a Molotov cocktail (which consists of a breakable container full of flammable liquid and equipped with a rag or other wick). A violation occurs, however, only if the offender acts with intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill a person or with intent to damage or destroy real or personal property without the owner's permission or, if public property, without the permission of the governmental agency having authority over that property. Reportedly, it has been difficult to prosecute some cases involving Molotov cocktails and similar devices because of the need to prove the offender's intent. Some people believe that manufacturing, buying, selling, furnishing, or possessing a Molotov cocktail should be a separate offense, without an element of intent.

CONTENT

Senate Bill 1287 (S-1) would amend Chapter 33 of the Michigan Penal Code to prohibit a person from manufacturing, buying, selling, furnishing, or possessing a Molotov cocktail or any similar 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, except as authorized by law. A violation would be a felony punishable by up to four years' imprisonment and/or a maximum fine of \$2,000.

Senate Bill 1288 (S-2) would amend the Code of Criminal Procedure to include a violation of Senate Bill 1287 (S-1) in the sentencing guidelines. The offense would be a Class F felony against the public safety, with a statutory maximum sentence of four years' imprisonment. The bill is tie-barred to Senate Bill 1287.

MCL 750.211a (S.B. 1287)
777.16k (S.B. 1288)

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

Under Chapter 33, manufacturing, buying, selling, furnishing, or possessing certain explosive or incendiary devices is punishable by up to 15 years' imprisonment and/or a maximum fine of \$10,000, and the penalty increases depending on whether the violation causes property damage, physical injury, serious impairment, or death. While the penalty is severe, prosecutors apparently are finding it difficult to prove the element of intent when someone is found in possession of or manufacturing a Molotov cocktail or similar device, without having used the device or laid out plans to destroy

something or injure someone with it. These devices are highly unstable, making them very dangerous regardless of whether anyone ever intends to use them to damage property or inflict injury or death. By implementing a new penalty of up to four years' imprisonment and/or a maximum fine of \$2,000, the bills would ensure that people caught with Molotov cocktails or other makeshift explosives were penalized, and could serve as a deterrent against making and possessing such devices.

Also, by referring to Molotov cocktails and similar devices, the bills would not implicate farmers for their use of fertilizers, which may become explosive or combustible when combined with other substances.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the new offense. A class F felony has a minimum sentencing guidelines recommended sentence range of 0-3 months to 17-30 months. Local units would incur the costs of intermediate sanctions and incarceration in a local facility, both of which vary by county. The State would incur the cost of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. For each offender who was convicted, sentenced to prison, and given the longest allowable minimum sentence, it would cost the State \$70,000. Public libraries would benefit from any additional penal fine raised.

Fiscal Analyst: Bethany Wicksall

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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.