

Legislative Analysis



CODE OF CRIMINAL PROCEDURE REVISIONS

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Senate Bill 170 as passed by the Senate

Sponsor: Sen. Bruce Patterson

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (3-24-05)

BRIEF SUMMARY: The bill would make several technical corrections to the Code of Criminal Procedure.

FISCAL IMPACT: The bill would have no significant impact on the state or local units of government.

THE APPARENT PROBLEM:

In the 2001-2002 legislative session, a multi-bill package was enacted to revise the state's domestic violence laws. Among other changes, the legislation included "dating relationship" within the definition of domestic violence. However, two sections in the Code of Criminal Procedure were overlooked, as well as an incorrect cross reference. In addition, several sentencing guidelines provisions in the code were discovered not to accurately reflect their corresponding criminal statutes.

In an attempt to correct these oversights, amendments were added in 2002 to House Bill 5291. The bill, which would have enhanced sentencing guidelines scoring when a violent crime was committed in the presence of a child, was subsequently vetoed by then Governor John Engler. In December of 2004, House Bill 5409, which was a reintroduction of House Bill 5291, had its controversial provisions removed and became a vehicle bill for the needed corrections regarding the domestic violence provisions and inconsistencies in the sentencing guidelines. Though passed by the House, it arrived in the Senate after that chamber's self-imposed deadline for action on bills had expired.

Legislation is once again being offered to clean up the provisions in the code that need correction and to also amend incorrect references to crimes related to damaging or destroying research property.

THE CONTENT OF THE BILL:

The bill would amend the Code of Criminal Procedure to include an individual with whom a victim currently has or previously had a "dating relationship" in provisions relating to arrests in domestic violence situations. The bill also would revise certain sentencing guidelines provisions.

Dating relationship. The code requires a magistrate to issue an arrest warrant upon presentation of a proper complaint alleging the commission of an offense and a finding of reasonable cause to believe that the accused individual committed that offense. The magistrate may not refuse to accept a complaint alleging assault or aggravated assault by the victim's spouse or former spouse, an individual with whom the victim has had a child in common, or an individual residing or having resided in the same household as the victim, on grounds that the complaint is signed upon information and belief by an individual other than the victim. Senate Bill 170 would include an individual with whom the victim has or has had a dating relationship in that provision.

The code requires each police agency in Michigan to develop, adopt, and implement written policies for police officers responding to domestic violence calls. The policies must address certain procedures for making a criminal arrest, and must emphasize that when an officer has probable cause to believe spouses, former spouses, individuals who have had a child in common, or other individuals who currently live or formerly lived together are committing or have committed crimes against each other, the officer should consider certain factors when determining whether to make an arrest of one or both individuals. The bill would include individuals who have or have had a dating relationship in that provision.

"Dating relationship" would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement. The term would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

Sentencing guidelines. Currently, the sentencing guidelines list a four-year statutory maximum penalty for the intentional false report of child abuse. The bill would change that to a variable statutory maximum penalty to reflect the range of imprisonment allowed under the corresponding provision in the Child Protection Law.

The sentencing guidelines currently refer to a felony of wearing body armor during the commission of violent crime. The bill would refer to "certain crimes" rather than "violent crime".

The bill also would change the sentencing guidelines citations to sections of the Michigan Compiled Laws governing damaging or destroying research property. Presently, the guidelines cite MCL 750.385(2)(c) through 750.385(2)(g). The bill instead would cite MCL 750.395(2)(c) through 750.395(2)(g).

MCL 764.1a et al.

ARGUMENTS:

For:

The bill would make a series of technical corrections to provisions of the sentencing guidelines portion of the Code of Criminal Procedure. By including dating relationships

in provisions pertaining to arrest warrants in domestic violence cases and to police agencies' policies for responding to domestic violence calls, the bill would make these provisions consistent with prohibitions and penalties in the Michigan Penal Code, which already include dating relationships.

POSITIONS:

A representative of the Michigan State Police indicated support for the bill. (3-23-05)

A representative of the Michigan Coalition Against Domestic and Sexual Violence indicated support for the bill. (3-23-05)

A representative of the Michigan Domestic Violence Prevention and Treatment Board indicated support for the bill. (3-23-05)

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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.