

PROHIBIT TORTURE

House Bill 5268 as enrolled
Public Act 335 of 2005
Sponsor: Rep. Tom Meyer

House Bill 5269 as enrolled
Public Act 336 of 2005
Sponsor: Rep. Michael Nofs
House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (8-16-06)

BRIEF SUMMARY: The bills would prohibit acts constituting torture and would prescribe penalties.

FISCAL IMPACT: Depending on how they affected numbers of convictions and sanctions imposed, the bills could increase state correctional costs, which average about \$29,000 per prisoner per year. Local costs likely would not be affected because the offense would be classified as a Class A offense, for which sentencing guidelines mandate a prison sentence, absent judicial departure from the guidelines.

THE APPARENT PROBLEM:

From time to time, a criminal case arises for which current laws do not seem to "fit" the elements of the case. When that happens, it can be difficult for prosecutors to find a charge that can be supported by the evidence and that will carry an appropriate punishment. Just such a situation has presented itself once again.

Earlier this year, Huron County law enforcement officials uncovered a bizarre set of events in which a husband had repeatedly tortured his wife, allegedly for his own sexual gratification. On nearly two dozen occasions, the husband deprived his blind and diabetic wife of food and manipulated her medications, causing her to lose consciousness. He then dressed her in provocative clothing and tied a plastic bag over her head. After asphyxiating her to a point near death, the husband, who had had some paramedic training, revived her. Reportedly, the wife had no knowledge that these incidents occurred. The attacks against her came to light only when the husband was stopped for a traffic violation and an officer found videotapes of the incidents.

Where Michigan law does specifically make it a crime to torture an animal, there is no statute prohibiting the torture of a human. Since the husband had revived her each time, he could not be charged with intent to murder. After several days of searching for applicable statutes to charge him under, the prosecutor was able to fit the facts to multiple violations of the vulnerable adult abuse statute (a felony with a 15-year maximum term of

imprisonment) and to the secret confinement aspect of the kidnapping statute (a felony punishable by life or any term of years). Legislation has been offered to create a separate crime category for torture.

THE CONTENT OF THE BILLS:

The bills would specify the acts that would constitute the new crime category of "torture" and make it a felony offense to torture another person. The bills would take effect March 1, 2006.

House Bill 5268 would add a new section to the Michigan Penal Code (MCL 750.85) to make it a felony punishable by imprisonment for life or any term of years to torture another person. A person would be guilty of the crime of torture if he or she, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicted great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control. Proof that a person suffered pain would not be an element of the crime of torture. In addition, a conviction or sentence under the bill would not preclude a conviction or sentence for a violation of any other law of the state arising from the same transaction.

"Cruel" would mean brutal, inhuman, sadistic, or that which torments.

"Custody or physical control" would mean the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority.

"Great bodily injury" would mean either 1) serious impairment of a body function as defined in Sec. 58c of the Michigan Vehicle Code or 2) one or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.

"Severe mental pain or suffering" would mean a mental injury that resulted in a substantial alteration of mental functioning that was manifested in a visibly demonstrable manner caused by or resulting from intentional or threatened infliction of great bodily injury; the administration or application, or the threat to do so, of mind-altering substances or other procedures calculated to disrupt the senses or the personality; the threat of imminent death; and/or the threat that another person would imminently be subjected to the above actions.

House Bill 5269 would amend the Code of Criminal Procedure (MCL 777.16d) to specify that torture would be a Class A felony against a person with a maximum term of imprisonment of life. The bill is tie-barred to House Bill 5269.

ARGUMENTS:

For:

The bills would close a gap in the criminal statutes by creating a new crime category for acts in which the perpetrator tortures, either physically or mentally, the victim. The recent case in Huron County revealed the current shortcomings of the criminal statutes. Though the man clearly was engaging in acts that would amount to torture in most people's minds, Michigan's criminal law does not specifically address this conduct. In situations such as these, prosecutors are at times hard pressed to find other crimes that would fit the elements of the case and that would provide appropriate penalties.

As written, the crime of torture would be a "specific intent crime," meaning the perpetrator intended to inflict, by his or her actions, the physical and mental effects suffered by the victim. Prosecutors would not have to prove that the victim suffered pain. This is an important provision considering that the husband in the Huron County case engaged in the torturous conduct only after his wife lost consciousness. In addition, the charge of torture would be triggered in situations in which the perpetrator had physical control or custody of the victim. Therefore, it could only be applied in narrower scenarios, such as the Huron County case, and would not have broad application.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ 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.