

Legislative Analysis



DISCHARGE AND DISMISSAL IN DOMESTIC VIOLENCE CASES

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House Bill 5968 (Substitute H-1)
Sponsor: Rep. Tonya Shuitmaker
Committee: Judiciary

First Analysis (5-23-06)

BRIEF SUMMARY: Under the bill, a person previously convicted on an assaultive crime would not be eligible for a discharge and dismissal for a first-offense domestic violence charge. The bill also would allow a court to impose more types of probation conditions, including jail.

FISCAL IMPACT: To the extent that the bill barred discharge and dismissal for certain assault offenders, it could increase state or local correctional costs. If the instant offense was a felony, the state could incur costs of felony probation supervision (at approximately \$2,000 per supervised offender annually) or prison incarceration (which averages \$30,000 per prisoner per year). If the felon was sentenced to jail, the county could incur increased costs; county jail costs vary by county. If the instant offense was a misdemeanor, the bill could increase local costs of misdemeanor probation, jail incarceration, or both. To the extent that fine revenues increased, the bill could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

Currently, if a person pleads guilty to or is found guilty of domestic violence involving assault and battery or aggravated assault (inflicting serious or aggravated injury without a weapon), the proceedings against the accused may be deferred and the accused placed on probation. At the successful completion of probation, the person is discharged and the proceedings dismissed; a discharge and dismissal does not count as a conviction. A person may only have one discharge and dismissal of an assault and battery or aggravated assault charge and is only eligible if he or she had no previous convictions of assault and battery or aggravated assault.

A recent series of murders has led to some advocating a change in the law. Earlier this year, Patrick Selepak pleaded guilty to domestic violence and was released on probation. However, he was a felon who had been paroled only months earlier after serving eight years in prison for armed robbery. Though the domestic violence charge was a violation of his parole and he was returned to prison, a bureaucratic mix-up allowed him to be released in January of this year. And, because he did not have a previous conviction of domestic violence, he was eligible for a discharge and dismissal under MCL 769.4a.

Shortly after his release on the domestic violence charge, he tortured and killed a man and his pregnant wife in New Baltimore and later killed a man who had befriended him

and his fiancée after the man learned they were wanted by authorities in the deaths of the New Baltimore couple.

House Bill 5967 has been introduced to clarify provisions in law that led to the mix-up that resulted in Mr. Selepak being released after violating his parole with the domestic violence crime. Some feel, however, that Mr. Selepak should not have been placed on probation for the domestic violence offense in light of his previous conviction of armed robbery. Therefore, legislation is also being offered to prohibit eligibility for a discharge and dismissal of a domestic violence charge if the person had been previously convicted of any type of assaultive crime.

THE CONTENT OF THE BILL:

House Bill 5968 would amend the Code of Criminal Procedure (MCL 769.4a) to require, as a condition for eligibility for discharge and dismissal of an assault and battery or aggravated assault charge, that the accused had not been previously convicted of an assaultive crime. Currently, "assaultive crime" is defined as that term is defined in Section 9a of Chapter X of the code (MCL 770.9a) and/or a violation of Chapter XI of the Michigan Penal Code (entitled "Assaults"). The bill would also include as an assaultive crime a violation of a local ordinance substantially corresponding to a violation described above.

In addition, the bill would allow a court to impose conditions of probation that are not currently available. Under the bill's provisions, a court could include any condition of probation authorized under Section 3 of Chapter XI of the code (MCL 771.3); i.e., electronic monitoring, community service, and payment of restitution, fees, and other assessments. The court could also order the defendant to serve up to 12 months in jail, though the period of imprisonment could not exceed the maximum period of imprisonment authorized for the offense.

("Assaultive crime" as defined in the Code of Criminal Procedure includes felonious assault, armed robbery, crimes involving the use of explosives or bombs, first and second degree murder, manslaughter, kidnapping, aggravated stalking, criminal sexual conduct, and crimes involving terrorism.)

ARGUMENTS:

For:

The bill would prevent a person who had been convicted of an assaultive crime from being eligible for a discharge and dismissal for a first violation of the domestic violence laws. The purpose of the discharge and dismissal provisions is to identify and separate those who make a mistake from those who pose a threat to others. An arrest for domestic violence can be a wake-up call for many, who, after examining their behaviors or after attending counseling for batterers or anger management classes, never reoffend. It gives them a chance to learn from their mistakes and better themselves without the stigma of a criminal record.

On the other hand, domestic violence is considered to be a crime of repetition; therefore, the law restricts eligibility for a discharge and dismissal only to those who had not been previously convicted of a domestic violence offense. However, a case can be made that eligibility for a discharge and dismissal should be further restricted to screen out anyone showing a tendency toward violent crimes.

The bill would address this issue by broadening the types of convictions that would prevent someone from being eligible for a discharge and dismissal of a first time domestic violence charge. A previous conviction for any of the assaultive crimes listed in statute would make someone ineligible. A change in the law could prevent the type of situation that played a part in the release of Mr. Selepak, who, after being placed on probation for a first offense domestic violence charge, murdered four innocent people (one of the victims was pregnant).

For:

Recently, a trial judge ruled that when setting probation conditions for a discharge and dismissal for a first offense domestic violence charge, that only the conditions currently outlined in the provision (mandatory counseling, payment for that counseling, or participation in a drug court) can be imposed. The bill would instead authorize a court to impose any of the probation conditions contained in Section 771.3 of the Code of Criminal Procedure, which includes up to 12 months in jail, not violating any criminal laws, not leaving the state, paying restitution, electronic monitoring, house arrest, reimbursing the county for costs incurred prosecuting the crime, and imposing numerous costs, fees, and assessments.

POSITIONS:

No positions were identified on this bill.

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