



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5449 (Substitute H-2 as passed by the House)

House Bill 5451 (as passed by the House)

Sponsor: Representative Tim Moore (H.B. 5449)

Representative John Proos (H.B. 5451)

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 5-8-05

CONTENT

House Bills 5449 (H-2) and 5451 would amend the Code of Criminal Procedure and the Michigan Penal Code, respectively, to do all of the following:

- Establish the felony of unlawful imprisonment and prescribe a criminal penalty for it.**
- Include unlawful imprisonment in the sentencing guidelines.**
- Add to the sentencing guidelines the crime of gross indecency involving a sexually delinquent person.**

The bills would take effect 90 days after their enactment. House Bill 5449 (H-2) is tie-barred to House Bill 5451.

House Bill 5449 (H-2)

The bill would include the proposed felony of unlawful imprisonment in the sentencing guidelines, and would add life-maximum gross indecency felonies to the guidelines, as shown in Table 1.

Table 1

Violation	Felony Class & Category	Statutory Maximum
Unlawful imprisonment	C - Person	15 years
Gross indecency (between males, between females, or between males and females) involving a sexually delinquent person	A - Public Order	Life

(Under the Penal Code, the felonies of gross indecency between males, between females, and between males and females are punishable by up to five years' imprisonment. Those violations are included in the sentencing guidelines as Class G felonies against the public order. The Penal Code also specifies that if a person convicted of gross indecency was, at the time of the offense, a "sexually delinquent person", he or she may be punished by a minimum of one day's imprisonment and a maximum of imprisonment for life.

“Sexually delinquent person” means any person whose sexual behavior is characterized by repetitive or compulsive acts that indicate a disregard of consequences or the recognized rights of others, or by the use of force upon another person in attempting sexual relations of either a heterosexual or homosexual nature, or by the commission of sexual aggressions against children under the age of 16 (MCL 750.10a.)

House Bill 5451

The bill specifies that a person would commit the crime of unlawful imprisonment if he or she knowingly restrained another person under any of the following circumstances:

- The person was restrained by means of a weapon or dangerous instrument.
- The restrained person was secretly confined.
- The person was restrained to facilitate the commission of another felony or to facilitate flight after commission of another felony.

A violation would be a felony punishable by up to 15 years’ imprisonment, a maximum fine of \$20,000, or both. The bill specifies that it would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law that the person committed while violating the bill.

Under the bill, “restrain” would mean forcibly to restrict a person’s movements or confine the person so as to interfere with his or her liberty without his or her consent or without lawful authority. The restraint would not have to exist for any particular length of time and could be related or incidental to the commission of other criminal acts.

“Secretly confined” would mean to keep either the confinement or the location of the restrained person a secret.

MCL 777.16q (H.B. 5449)
Proposed MCL 750.349b (H.B. 5451)

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 proposed offense. Offenders who would be convicted of unlawful imprisonment are currently prosecuted under other statutes. An offender convicted of the Class C unlawful imprisonment offense under the bills would receive a sentencing guidelines minimum sentence range of 0-11 months to 62-114 months. An offender convicted of the Class A gross indecency offenses would receive a sentencing guidelines minimum sentence range of 21-35 months to 270 months-life under House Bill 5449 (H-2). To the extent that the bills resulted in increased incarceration time for offenders convicted of the offenses, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as increased costs of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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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.