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House Bill 5968 (Substitute H-1 as passed by the House)
Sponsor: Representative Tonya Schuitmaker
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 11-27-06

CONTENT

The bill would amend the Code of Criminal Procedure to do the following in regard to the deferral and dismissal of domestic assault proceedings:

- Allow a deferral and dismissal only for an offender who had not previously been convicted of an "assaultive crime", rather than an offender who has not previously been convicted of assault or aggravated assault.**
- Specify that a probation order could include any condition of probation authorized under the Code.**
- Allow the court to order the defendant to be imprisoned for up to 12 months.**

Deferred Proceedings

Under the Code, if the offender has not previously been convicted of assault or aggravated assault, a court may defer the proceedings against an offender who pleads guilty to, or is found guilty of, assault or aggravated assault in a domestic situation and may dismiss the charges after he or she serves a probationary period. (The deferral and dismissal provision applies when the victim of the assault is the offender's spouse or former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual who resides or has resided in the same household as the offender.)

As a condition of probation, the court may require the accused to participate in a mandatory counseling program. The court also may order the accused to participate in a drug treatment court. Upon a violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed with sentencing as otherwise provided in the Code. The court must enter an adjudication of guilty and proceed as otherwise provided if any of the following circumstances exist:

- The accused commits an assaultive crime during the period of probation.
- The accused violates a court order to receive counseling regarding his or her violent behavior.
- The accused violates a court order to have no contact with a named individual.

Under the bill, the court could defer proceedings when an offender pleaded guilty to or was found guilty of domestic assault only if the offender had not previously been convicted of an assaultive crime. An order of probation entered in the case could include any condition of

probation authorized under the Code, including requiring the accused to participate in a mandatory counseling program.

In addition, the bill would allow the court to order the defendant to be imprisoned for up to 12 months at the time or intervals, which could be consecutive or nonconsecutive and within the period of probation, as the court determined. The period of imprisonment, however, could not exceed the maximum period of imprisonment authorized for the offense if the maximum period were less than 12 months. The court could permit day parole as authorized under Public Act 60 of 1962. The court also could permit a work or school release from jail.

(Public Act 60 allows a county jail sentence to grant the person the privilege of leaving the jail during necessary and reasonable hours to seek employment, work, conduct a self-employed business or occupation, attend an educational institution, or obtain medical treatment, substance abuse treatment, mental health counseling, or psychological counseling.)

Definition of "Assaultive Crime"

Currently, "assaultive crime" means that term as defined in Section 9a of Chapter X of the Code of Criminal Procedure, or a violation of Chapter XI of the Michigan Penal Code. Under the bill, the definition also would include a violation of a local ordinance substantially corresponding to any of those violations.

Under Section 9a of Chapter X the Code of Criminal Procedure, "assaultive crime" means any of the following:

- An assault or assault and battery of a Department of Human Services (DHS) employee while he or she is performing his or her duties or because of his or her status as a DHS employee, that causes serious impairment of a body function (MCL 750.81c(3)).
- Assault with a dangerous weapon, assault with intent to commit murder, or assault with intent to do great bodily harm (MCL 750.82-750.84).
- Assault with intent to maim, assault with intent to commit a felony not otherwise punished, unarmed assault with intent to rob and steal, or armed assault with intent to rob and steal (MCL 750.86-750.89).
- Assault against a pregnant woman with intent to cause miscarriage or stillbirth or death or great bodily harm to the embryo or fetus, or such an assault that did result in miscarriage or stillbirth or death or great bodily harm to the embryo or fetus (MCL 750.90a, or 750.90b(a), or 750.90b(b)).
- Attempted murder (MCL 750.91).
- A violation of Chapter 33 (Explosives, Bombs, and Harmful Devices) of the Michigan Penal Code (MCL 750.200-750.212a).
- First-degree murder, second-degree murder, or manslaughter (MCL 750.316, 750.317, or 750.321).
- Kidnapping, a prisoner taking another as a hostage, or kidnapping of a child under the age of 14 (MCL 750.349, 750.349a, or 750.350).
- Mayhem (MCL 750.397).
- Stalking, if the victim was under 18 at any time during the stalker's course of conduct and the offender is five or more years older than the victim (MCL 750.411h(2)(b)).
- Aggravated stalking (MCL 750.411i).
- First-, second-, third-, or fourth degree criminal sexual conduct (CSC) or assault with intent to commit CSC (MCL 750.520b-750.520e, or 750.520g).
- Armed robbery, carjacking, or robbery (MCL 750.529-750.530).
- A violation of Chapter 83-A of the Penal Code, i.e., the Michigan Anti-Terrorism Act (MCL 750.543a-750.543z).

Chapter XI (Assaults) of the Michigan Penal Code includes all of the following:

- Assault and aggravated assault, including domestic assault and aggravated domestic assault (750.81 and 750.81a).
- Threats or assault against a DHS employee performing his or her duties of employment, or because of his or her status as a DHS employee (MCL 750.81c).
- Assaulting, battering, wounding, resisting, obstructing, opposing, or endangering a police officer, conservation officer, sheriff, constable, Federal peace officer, firefighter, or emergency medical service personnel performing his or her duties (MCL 750.81d).
- Assault with a dangerous weapon, assault with intent to commit murder, or assault with intent to do great bodily harm (MCL 750.82-750.84).
- Torture (MCL 750.85)
- Assault with intent to maim, assault with intent to commit a felony not otherwise punished, unarmed assault with intent to rob and steal, or armed assault with intent to rob and steal (MCL 750.86-750.89).
- Sexual intercourse under pretext of medical treatment (MCL 750.90).
- Assault of a pregnant woman or gross negligence under the Michigan Vehicle Code resulting in miscarriage or stillbirth or death or injury to the embryo or fetus (MCL 750.90a-750.90f).

MCL 769.4a

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of domestic violence. According to the Uniform Crime Report, there were 55,200 domestic violence offenses reported in 2004. To the extent that the bill would result in increased sentences to prison or jail or increased incarceration time for offenders convicted of domestic violence, local governments would incur increased costs of incarceration in local facilities, which vary by county. The State would incur the cost of incarceration in a State facility at an average annual cost of \$31,000.

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.