

ENHANCED PENALTY FOR REPEAT DOMESTIC VIOLENCE VIOLATIONS

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 845 with committee amendment
Sponsor: Sen. Rick Jones

Senate Bill 846 with committee amendments
Sponsor: Sen. Tory Rocca

Senate Bill 847 with committee amendment
Sponsor: Sen. Tonya Schuitmaker

Senate Bill 848 with committee amendment
Sponsor: Sen. Steven Bieda

House Committee: Judiciary
Senate Committee: Judiciary

Complete to 11-27-12

A SUMMARY OF SENATE BILLS 845-848 AS REPORTED BY HOUSE COMMITTEE

Together, the bills would (1) increase the penalties for repeat domestic violence violations, (2) allow a domestic violence offense that had been discharged and dismissed to be counted as a conviction for determining an enhanced sentence for repeat domestic violence violations, (3) establish a penalty for assaulting another person by strangulation or suffocation, and (4) include the enhanced sentences in the sentencing guidelines. The bills would take effect on April 1, 2013.

Senate Bill 845 would amend the Code of Criminal Procedure (MCL 769.4a). Currently, if an individual pleads guilty to, or is found guilty of, assault or assault and battery involving domestic violence, the court may defer further proceedings with the consent of the accused and the prosecuting attorney (in consultation with the victim) and place the accused on probation. Upon the successful fulfillment of the terms and conditions of the probation, the court is required to discharge the person and dismiss the charges. A discharge and dismissal under this provision is done without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. A person is eligible for only one discharge and dismissal under this provision.

The bill would instead specify that a discharge and dismissal would be a prior conviction in a prosecution under provisions of the Michigan Penal Code pertaining to assault or assault and battery involving domestic violence.

Senate Bill 847 would amend the Michigan Penal Code (750.81 and 750.81a) to enhance the penalties for repeat convictions of domestic violence.

Currently, an individual who commits a third or subsequent assault or assault and battery involving domestic violence (two or more priors), or a second or subsequent aggravated assault involving domestic violence (one or more priors), is guilty of a felony punishable by imprisonment for not more than two years and/or a fine of not more than \$2,500. The bill would increase the maximum term of imprisonment for these crimes to five years and the maximum fine to \$5,000.

Senate Bill 848 would amend the Michigan Penal Code (MCL 750.84) to specify that assaulting another person by strangulation or suffocation would carry the same penalty as for assault with intent to do great bodily harm less than murder—a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$5,000. "Strangulation or suffocation" would mean intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

The bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as a violation of Section 84 (assault with intent to great bodily harm less than murder or assault by strangulation or suffocation).

Senate Bill 846 would amend the sentencing guidelines within the Code of Criminal Procedure (MCL 777.16d) to include the enhanced penalties under Senate Bill 847 and also the penalty for assault by strangulation or suffocation as proposed in Senate Bill 848. That crime would be a Class D felony against a person with a maximum term of imprisonment of 10 years.

The felony classification for domestic assault with prior convictions and aggravated domestic assault with prior convictions would change from a Class C to a Class E felony and the statutory maximum term of imprisonment would be changed from two years to five years.

The bill is tie-barred to Senate Bills 847 and 848.

FISCAL IMPACT:

Senate Bills 845-847 would increase state costs related to the correctional system by an indeterminate amount and would have an ambiguous effect on local correctional costs. They could also result in an increase in civil fine revenues that result from these offenses. These revenues are dedicated to public libraries.

According to Department of Corrections annual reports, an average of 628 offenders were convicted annually of either third-offense domestic violence under MCL 750.81(4) or second-offense aggravated domestic violence under MCL 750.81a(3) between 2008

and 2010. Of those, an average of 91 offenders per year entered the state prison system with these convictions as their primary offense and were sentenced to an average minimum prison term of 1.5 years.

The bills reclassify these offenses from Class G to Class E felonies and increase the maximum prison terms for both. These provisions would likely increase the number of offenders sentenced to prison as a result of these convictions and increase the minimum prison terms prescribed by the courts under sentencing guidelines. The impact on local jail costs is indeterminate as some offenders who would otherwise have served jail time may instead be sentenced to state prison under the bills, while other offenders may be sentenced to local jail terms instead of an alternative sanction such as probation. These factors would offset one another.

Senate Bill 848 would have an indeterminate impact on the State and on local units of government. To the extent that the new felony offense for assault by strangulation or suffocation resulted in offenders being convicted of this offense rather than another lesser offense, the bill could increase state and local correctional costs and civil fine revenue. However, data is not available to evaluate current sentencing patterns for offenders who commit this offense.

The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year. The cost of local incarceration in a county jail varies by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,400 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

POSITIONS:

A representative of the Michigan Prosecuting Attorneys Association testified in support of the bills. (11-8-12)

The Michigan Coalition to End Domestic and Sexual Violence indicated support for the bills. (11-8-12)

The Michigan Domestic Violence and Sexual Assault Prevention and Treatment Board indicated support for the bills. (11-8-12)

The Michigan County Social Services Association indicated support for the bills. (11-8-12)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Bob Schneider

■ 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.