

Legislative Analysis



ENHANCED PENALTY FOR REPEAT DOMESTIC VIOLENCE VIOLATIONS

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Senate Bill 845 (Substitute S-2)

Sponsor: Sen. Rick Jones

Senate Bill 846 (Substitute S-2)

Sponsor: Sen. Tory Rocca

Senate Bill 847 (Substitute S-2)

Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 11-7-12

A SUMMARY OF SENATE BILLS 845-847 AS PASSED BY THE SENATE 2-7-12

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, and (3) include the enhanced sentences in the sentencing guidelines.

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 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 Bill 847.

FISCAL IMPACT:

The bills 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 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.

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