

Legislative Analysis



REVISE ELEMENTS OF CRIMES OF ARSON

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House Bill 5692 without amendment
Sponsor: Rep. John Walsh

House Bill 5694 without amendment
Sponsor: Rep. Joseph Graves

House Bill 5693 without amendment
Sponsor: Rep. Kevin Cotter

House Bill 5695 without amendment
Sponsor: Rep. Stacy Erwin Oakes

Committee: Judiciary
First Analysis (10-25-12)

BRIEF SUMMARY: Together, the bills would revise provisions relating to the crime of arson, increase penalties, define terms, and make complementary changes to the sentencing guidelines.

FISCAL IMPACT: The bills have a potential to affect both state and local corrections costs and civil fines, as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

In 2011, there were 10,552 arson and suspicious fires in Michigan, according to the Michigan Arson Prevention Council, representing one out of every three fires statewide. The cost of those fires last year topped \$166 million. But that total doesn't include direct costs such as medical care to injured persons, funerals, temporary shelter for those who lost their homes, interruptions to business (and loss of employment), demolition of burned structures, fire investigation, prosecution, court proceedings, and increase in insurance premiums for state residents.

The figure also cannot convey the human tragedy of the 67 people who perished and the 131 who were injured. Or the toll that arson can take on a community plagued by intentionally-set fires, such as Detroit and Flint. The 287 arsons in Flint, 100 more than second place Toledo, Ohio, earned the city the moniker of Arson Capital. With 200 suspected arsons by July of this year, Flint could be well on its way to retain the title for 2012.

Penalties for arson range from misdemeanors to felonies, and can result in substantial fines, jail, or prison. Yet, statistics show that many arsonists get a slap on the wrist, compared to the damage caused by their actions and the impact to the victim or community. Some believe that part of the problem is that sentencing guidelines for other crimes, as well as the sheer numbers of inmates with a mental illness that should/could have been diverted to the mental health system, have filled prison beds. The result is that arson cases are often treated by the courts as nonviolent offenses, with sentencing recommendations below the minimum range calculated by the sentencing guidelines. For example, testimony on the bill package presented by representatives of the Wayne

County Prosecutor's Office highlighted a recent case involving insurance fraud in which people, including a firefighter, were injured. The man got probation.

The problem with Michigan's current laws, according to prosecutors and law enforcement, is that they do not recognize arson's inherent potential for destruction and loss of human life. Once a fire is set, it takes on a life of its own. A fire intended to be small can quickly spread, even to nearby structures, entrapping residents and resulting in multiple injuries or fatalities. Yet the laws do not distinguish between setting fire to a vacant house or one filled with children, and the penalties for such a fire, even with multiple fatalities, only carry a maximum sentence of 20 years.

Legislation has therefore been offered to restructure the arson laws with degrees distinguishing minor offenses from serious ones and increasing penalties.

THE CONTENT OF THE BILLS:

House Bills 5692-5694 all amend Chapter X of the Michigan Penal Code, entitled Arson and Burning, and are tie-barred to each other, meaning that no single bill could take effect unless all are enacted. All three would take effect 90 days after enactment. House Bill 5696, which would amend the sentencing guidelines, is tie-barred to the other three.

House Bill 5692 would amend the Michigan Penal Code (MCL 750.71, 750.72, and 750.73). Currently, maliciously or willfully burning a building (other than a home), real property, or the contents of the building or real property, whether owned by the person setting the fire or by another, is a felony punishable by imprisonment for up to 10 years; burning a dwelling or its contents, occupied or unoccupied, is punishable by up to 20 years' imprisonment.

The bill would delete the above provisions and do the following:

Create the crime of first degree arson.

This would be a felony punishable by imprisonment for life or any term of years and/or a fine of not more than \$20,000 or three times the value of the property damaged or destroyed, whichever is greater.

Elements of the crime would include the willful or malicious burning, damaging, or destruction by fire or explosives of any of the following:

**** A multi-unit building or structure (and its contents) in which one or more units are a dwelling, whether occupied or not, at the time of the fire or explosion.**

**** A building, structure, or real property if the fire or explosion physically injures any individual.**

**** A mine.**

First degree arson would apply regardless of whether the person owned the dwelling, building, structure, or mine.

Create the crime of second degree arson.

This would be a felony punishable by imprisonment for not more than 20 years and/or a fine of not more than \$20,000 or three times the value of the property damaged or destroyed, whichever is greater.

A person would be guilty of second-degree arson who maliciously or willfully burned, damaged, or destroyed by fire or explosive a dwelling or its contents whether occupied, unoccupied, or vacant at the time of the fire or explosion, regardless of whether the person owns the dwelling or the contents.

Definitions.

The bill would define numerous terms, including "building," "burn," "damage," "dwelling," "individual," "personal property," "physical injury," and "prior conviction." "Prior conviction" would mean a previous conviction for a violation of Chapter X arising out of a separate transaction and would include transactions cited under the Penal Code or a local ordinance, federal law, or law of another state substantially corresponding to Chapter X, with the exception of a violation of Section 79(1)(a) - clearing of land and disposing of refuse in a township.

House Bill 5693 would amend the Penal Code (MCL 750.74, 750.75, and 750.76) to delete the current provisions which pertain to burning personal property, burning of insured property with the intent to defraud the insurer, and to a man or woman burning property owned wholly or in part by a spouse. The current penalties range from misdemeanors to felonies and are based on the value of the property damaged or destroyed and also whether the offender had one or more prior convictions for arson.

Instead, the bill would create the crimes of third- and fourth-degree arson and the crime of arson of insured property as follows:

Third-degree arson

This would be a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$20,000 or three times the value of the property damaged or destroyed, whichever is greater. A person who did any of the following—regardless of whether he or she owned the property—would be guilty of third-degree arson:

**** Willfully or maliciously burned, damaged, or destroyed by fire or explosive any building or structure, or its contents, regardless of whether it was occupied, unoccupied, or vacant.**

**** Willfully and maliciously burned, damaged, or destroyed by fire or explosive the following or its contents: (1) any personal property valued at \$20,000 or more or (2) any personal property valued at \$1,000 or more and the person had one or more prior convictions.**

Fourth-degree arson

This would be a felony punishable by imprisonment for not more than five years and/or a fine of not more than \$10,000 or three times the value of the property, whichever is greater. Regardless of whether a person owned the personal property, a person would be guilty of fourth-degree arson if he or she:

****** Willfully and maliciously burned, damaged, or destroyed by fire or explosive any personal property with a value of at least \$1,000 and less than \$20,000 or personal property valued at \$200 or more if the person had one or more prior convictions.

****** Willfully or negligently set fire to a woods, prairie, or grounds of another person or permitted fire to pass from his or her woods, prairie, or grounds to another's causing damage or destruction to that other property.

Arson of insured property

This would be the act of willfully or maliciously burning, damaging, or destroying by fire or explosive any of the following, or the contents, regardless of whether the person owned the dwelling, building, structure, other real property, or personal property:

****** Any dwelling insured against loss from fire or explosion if the fire or explosion was caused with the intent to defraud the insurer. A violation would be a felony punishable by imprisonment for life or any term of years and/or a fine of not more than \$20,000 or three times the value of the property damaged or destroyed, whichever was greater.

****** Except as provided above, any building, structure, or other real property insured against loss from fire or explosion if the fire or explosion were caused with the intent to defraud the insurer. A violation would be a felony punishable by imprisonment for not more than 20 years and/or a fine of not more than \$20,000 or three times the value of the property, whichever was greater.

****** Any personal property insured against loss by fire or explosion caused with the intent to defraud the insurer. A violation would be a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$20,000 or three times the value of the property, whichever was greater.

House Bill 5694 also would amend the Penal Code (MCL 750.77, 750.78, and 750.79). The bill would delete the current provisions and penalties in these sections (intent to set fire with inflammables/combustibles/explosives; setting fire to woods/prairies/grounds; and clearing of land and disposing of refuse in townships, respectively).

Instead, the bill would rewrite the sections as follows:

Create arson in the sixth degree, a misdemeanor.

Except as provided in House Bills 5692 and 5693, a person would be guilty of a violation for intentionally damaging or destroying by fire or explosive any of the following or its contents:

**** Personal property of \$200 or more but less than \$1,000 and one or more prior convictions.**

**** Personal property valued at less than \$200 if the person had one or more prior convictions.**

Arson in the sixth degree would be punishable by imprisonment for not more than one year and/or a fine of not more than \$2,000 or three times the value of the property, whichever was greater. For the purposes of Section 77, "personal property" would include various motor vehicles, a trailer, and other personally owned property. "Prior conviction" would mean a prior conviction for a violation of Chapter X arising out of a separate transaction than the current violation.

Additional prohibitions

Except as provided in Sections 72-77, a person would be prohibited from intentionally doing any of the following whether he or she owned the property involved:

**** Willfully and maliciously burning, damaging, or destroying by fire or explosive any of the following or its contents, regardless of who owned it:**

- Personal property valued at \$200 or more but less than \$1,000.
- Personal property valued at less than \$200 where the person has one or more prior convictions. The penalty would be a misdemeanor punishable by imprisonment for not more than one year and a fine of not more than \$2,000 or three times the value of the property, whichever was greater.

**** Willfully and maliciously burning, damaging, or destroying by fire or explosive personal property having a value of less than \$200; or negligently, carelessly, or recklessly setting fire to a hotel or motel or its contents and by setting that fire, endangering the life or property of another.**

The penalty would be a misdemeanor punishable by not more than 93 days and a fine of not more than \$500 or three times the value of the property, whichever was greater.

Use of inflammable, combustible, or explosive materials

The bill would move the provisions currently in Section 77 to Section 79 and add the following in regards to placing an incendiary or explosive with intent to commit arson:

**** Specify the following violations would result in a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$15,000 or three times the value of the property, whichever is greater:**

- Causing fire or explosion with the intent to defraud an insurer for property having a value of more than \$2,000.

- With some exceptions, the property is a building, structure, or other real property regardless of whether the person owned it, and the fire or explosion resulted in an injury to another or was set intentionally to defraud an insurer.
- The property is a dwelling.

**** Specify conduct regarding the following would be a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$20,000 or three times the value of the property, whichever is greater:**

- The person intended the fire or explosion against property that was an insured dwelling, regardless of whether he or she owned it.
- The property was a dwelling and the fire or explosion resulted in physical injury any individual.

House Bill 5695 would amend the Code of Criminal Procedure (MCL 777.16c) to place the new felony penalties within the sentencing guidelines; increase the maximum terms of imprisonment and revise the descriptions for several crime categories such as first- and second-degree arson; and delete existing penalty descriptions made obsolete by the bills' revisions.

FISCAL INFORMATION:

The bills modify current penalties for certain arson-related offenses, and thus have the potential to affect state and local corrections costs and civil fine revenue. However, the impact of the various changes in the bills on these correctional costs works in opposite directions, so it's indeterminate as to whether these costs and revenues would increase or decrease.

As an example, the bills create a new Class B felony offense for first degree arson punishable by a prison term of up to life. This offense includes arson related to a multi-unit building used as a dwelling and arson that results in a physical injury to a person. Under current law, these offenses would fall under the general offense of arson of a dwelling place, which is a Class B felony with a 20-year maximum prison term. Thus, the average prison stay for offenders convicted of first-degree arson would likely increase to some extent. The same is true for the creation of a new Class A felony offense for arson of an insured dwelling with a maximum sentence of life.

Conversely, however, there are changes which could reduce prison lengths of stay. For instance, under current law, the "arson of a dwelling place" offense is a Class B felony with a maximum 20 year prison sentence. Under the bills, "arson of a dwelling place" (other than a multi-unit building or arson that results in physical injury) becomes second degree arson, which is defined as a Class D felony with a maximum prison term of 20 years. The change from Class B to Class D status would effectively reduce the likely minimum sentences for this offense under sentencing guidelines. This would make offenders eligible for earlier release on parole, and could result in decreased lengths of

stay in prison. The same is true for arson of real property which is not a dwelling, which falls from Class D to Class E in the guidelines.

Thus, the overall impact of the bills on state and local correctional costs is indeterminate at this time. To the extent that the bills affect state prison or local jail terms, the average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. 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 \$2,300 per supervised offender per year. Any change in penal fine revenues would affect funding for local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

The bill package creates an appropriate structure for arson crimes. By establishing degrees, penalties can better fit the elements of a particular crime. Currently, the laws do not reflect the motivation behind the crime, such as the greed behind burning down a building to collect on the insurance, or the potential for injuries posed by setting fire to a multi-unit apartment building as compared to a single family dwelling. Current laws also do not differentiate from arsons that result in injuries or fatalities from those that result only in property damage.

Additionally, existing laws only allow for a maximum prison sentence of 20 years. Among other penalty enhancements, the bill package would increase the maximum term of imprisonment to life for setting fire to a multi-unit dwelling or to a single family dwelling if anyone, including firefighters, were injured.

Prosecutors believe that the bills will give them the tools needed to fit charges and penalties more appropriately to the elements of a crime on a case-by-case basis. The bills also give room for plea deals that will sting more than a slap on the wrist as is often the situation now. Increasing the maximum penalties will also affect how offenses are scored for the purpose of sentencing recommendations and may result in more arsonists seeing the inside of a prison cell instead of walking the streets on probation. Most importantly, the bills send a message to those considering arson and to courts sentencing arsonists that arson is serious business and will be treated as such.

For:

Last year, 67 residents of Michigan died in arson fires. More than a hundred were injured. Some of those injuries will affect the victim for a lifetime. Burns are some of the most painful, and most disfiguring, injuries a person can sustain. Even smoke inhalation can result in lifetime disability. Then there is the economic cost of arson. With at least 37 percent of fires in the state classified as arson or a suspicious fire, the economic toll is huge. For just Wayne County, the 2010 arson-related costs were estimated at \$237.8 million in damages. Arson costs people their homes, their jobs, and sometimes their lives. Towns and cities lose tax revenue for burned out properties and

incur expense associated with the resulting blight and demolition costs. Burned out forests affect the tourist and logging industries. Arson-related insurance fraud raises insurance rates for all. Enacting the bills—both as a deterrent and to establish more fitting penalties—is good public policy.

Response:

The bills are not quite ready for enactment in their current form. Several technical problems have been identified. For example, the bills create arson in the 1st through 4th degree and then 6th degree. Arson in the 5th degree appears to be missing. In another example, a physical injury that would result in higher penalties is defined as a serious injury, yet the definition includes bruises. It is not clear if a "bruise" was meant to be identified as a "serious injury." In another section, in which two different scenarios are distinguished by the value of the property destroyed, the penalties are the same rather than attaching a stronger penalty to the crime with the higher value of property burned.

POSITIONS:

Representatives of the Wayne County Prosecutors Office testified in support of the bills. (9-27-12)

The Michigan Arson Prevention Committee (MAPC) posted a statement in support of the bills on its website.

Legislative Analyst: Susan Stutzky
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