



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

Senate Bill 642 (Substitute S-1 as reported)
Senate Bill 643 (Substitute S-1 as reported)
Sponsor: Senator Rick Jones (S.B. 642)
Senator Roger Kahn, M.D. (S.B. 643)
Committee: Judiciary

(as passed by the Senate)

Date Completed: 10-3-11

RATIONALE

Nearly 2 million American workers report having been victims of workplace violence each year, and many more cases go unreported, according to the Federal Occupational Safety & Health Administration (OSHA). Health care workers have been identified by research and statistics as being particularly at risk. According to the Michigan Nurses Association, violence toward health care workers has risen in recent years, and more than half of emergency department nurses nationwide have been physically assaulted at work. Some people believe that enhanced criminal penalties for assaulting a health care worker could provide a deterrent to workplace violence against health professionals and, compared with existing penalties, would more adequately punish those who did assault a health care worker.

CONTENT

Senate Bill 642 (S-1) would amend the Michigan Penal Code to prescribe criminal penalties for assault, battery, or assault and battery of a health care professional while he or she was performing his or her professional duties or because of his or her status as a health care professional.

Senate Bill 643 (S-1) would amend the Code of Criminal Procedure to add the felonies proposed by Senate Bill 642 (S-1) to the sentencing guidelines.

Senate Bill 643 (S-1) is tie-barred to Senate Bill 642.

Senate Bill 642 (S-1)

Under the bill, a person who assaulted, battered, or assaulted and battered a health care professional, while the health care professional was performing his or her professional duties or because of his or her status as a health care professional, would be guilty of a crime as shown in Table 1.

Table 1

Violation	Level	Penalty
Assault/Battery of a health care professional	Misdemeanor	Up to 1 year and/or \$1,000
Assault/Battery of a health care professional causing bodily injury requiring medical attention	Felony	Up to 2 years and/or \$1,000
Assault/Battery of a health care professional causing serious impairment of a body function	Felony	Up to 5 years and/or at least \$1,000 and up to \$5,000

A conviction or sentence imposed for a violation of the bill would not preclude a conviction or sentence for a violation of any other applicable law.

"Health care professional" would mean an emergency medical technician; an ambulance operator or ambulance attendant; a nurse; a physical therapist; an occupational therapist; a physician; or a physician's assistant.

"Serious impairment of a body function" would mean that term as defined in Section 58c of the Michigan Vehicle Code. (Under that section, "serious impairment of a body function" includes one or more of the following: loss of a limb or the use of a limb; loss of a foot, hand, finger, or thumb or the use of a foot, hand, finger, or thumb; loss of an eye or ear or the use of an eye or ear; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state that lasts for more than three days; measurable brain or mental impairment; a skull fracture or other serious bone fracture; subdural hemorrhage or subdural hematoma; or loss of an organ.)

Senate Bill 643 (S-1)

Under the bill, assaulting or battering a health care professional would be included in the sentencing guidelines, as shown in Table 2.

Table 2

Violation	Felony Class & Category	Statutory Maximum Penalty
Assaulting a health professional causing bodily injury requiring medical attention	G-Person	2 years
Assaulting a health professional causing serious impairment of a body function	E-Person	5 years

Proposed MCL 750.81f (S.B. 642)
MCL 777.16d (S.B. 643)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

An official with the Michigan Nurses Association testified before the Senate Judiciary Committee that violence toward health care professionals has been on the rise over the last several years, particularly in emergency rooms (E.R.s). He cited an Emergency Nurses Association survey that found that more than 50% of E.R. nurses had been physically assaulted at work and one in four had experienced violence more

than 20 times in the past three years. The Senate committee also heard from an Alpena-based E.R. nurse who was attacked by a patient and suffered injuries significant enough to keep her from returning to work indefinitely. She said that the man who assaulted her and other hospital personnel was charged with six criminal counts and agreed to plead guilty to two. He apparently spent just a few days in jail and paid a small fine.

The problem of violence against health care professionals is not isolated to a few cases or limited to E.R. nurses. According to OSHA, "[H]ealth care and social service workers have faced a significant risk of job-related violence" and assaults are "a serious safety and health hazard within these industries" ("Guidelines for Preventing Workplace Violence for Health Care & Social Service Workers"). The OSHA report cites Bureau of Labor Statistics (BLS) data showing that 48% of all nonfatal injuries from occupational assaults and violent acts in 2000 occurred in health care and social services, with most of those incidents occurring in hospitals and other care facilities. That year, according to the BLS data, for every 10,000 full-time workers, 9.3 health services workers suffered injuries resulting from assault and violent acts, compared to an injury rate of 2.0 for the private sector overall. The rate was 25.0 for workers in nursing and personal care facilities.

Reportedly, Massachusetts recently became the first state to establish specific penalties for assault of health care workers. By establishing graduated criminal penalties for people who assault and injure health care professionals while they perform their professional duties, or because of their professional status, the bills would recognize the high risk of workplace violence for many health care workers in Michigan.

The bill also would more adequately punish offenders who attack the very people providing care for them, and could serve as a deterrent to such violent actions. Under current law, for example, a "simple" assault or assault and battery is a misdemeanor punishable by imprisonment for up to 93 days and a \$500 maximum fine. An assault that inflicts serious or aggravated injury also is a misdemeanor, with a maximum term of one year's incarceration and a fine of up to

\$1,000. Under the bills, that would be the penalty for a simple assault or assault and battery of a health care professional, while an offense that caused an injury would be a felony punishable by up to two or five years' imprisonment and a maximum fine of \$1,000 or \$5,000, depending on the severity of the injury.

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. An offender convicted of the Class G offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months. An offender convicted of the Class E offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. Local governments would incur the 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 \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Any additional penal fine revenue resulting from convictions related to the proposed criminal offense would benefit public libraries.

Fiscal Analyst: Matthew Grabowski

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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.