

Legislative Analysis



SCHOOL VIOLENCE THREATS

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House Bill 5942 as reported from committee w/o amendment
Sponsor: Rep. Beau Matthew LaFave

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5943 as reported from committee w/o amendment
Sponsor: Rep. Scott VanSingel

Committee: Judiciary
Complete to 6-7-18

BRIEF SUMMARY:

House Bill 5942 would create a two-tier penalty structure for making threats involving the use of certain dangerous weapons against students or school employees on school grounds or property.

House Bill 5943 would place the felony penalty created by HB 5942 within the sentencing guidelines chapter of the Code of Criminal Procedure.

Each bill would take effect 90 days after being enacted.

DETAILED SUMMARY:

House Bill 5942 would add a new section to Chapter XXXVII (Firearms) of the Michigan Penal Code. Under the bill, a person who threatens to use a firearm, explosive, or other dangerous weapon to commit an act of violence, as described below, would be subject to criminal penalties.

The penalty would apply to threats, made verbally, through the use of an electronic device or system, or through other means, to commit an act of violence against any students or school employees on school grounds or school property. However, the threat would have to be able to be reasonably interpreted to be harmful or adverse to human life or “dangerous to human life” as defined in the Code (see below). A violation would be a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000, or both.

If the person had the specific intent to carry out the threat, or had undertaken an overt act toward carrying out the threat, the penalty would be enhanced to a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$20,000, or both.

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 transaction as a violation of these provisions.

Definitions

“Dangerous to human life” is defined in Section 543b of the Code to mean that which causes a substantial likelihood of death or serious injury or that is a violation of Section 349 or 350. (Section 349 prohibits kidnapping, and Section 350 prohibits maliciously, forcibly, or fraudulently leading, taking, or enticing away a child under the age of 14 years with the intent to detain or conceal the child from the child’s parent or legal guardian.)

Section 237a of the Code defines “school” to mean a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12.

Section 237a defines “school property” to mean a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.

Proposed MCL 750.235b

House Bill 5943 would amend the sentencing guidelines chapter (Chapter XVII) of the Code of Criminal Procedure to specify that threatening to commit a violent act against school students or employees on school property with an overt act toward completion or with specific intent would be a Class D felony against a person with a maximum term of imprisonment of 10 years. The bill is tie-barred to HB 5942, meaning that HB 5943 could not take effect unless HB 5942 were also enacted.

MCL 777.16m

BRIEF DISCUSSION OF THE ISSUES:

In the wake of fatal school shooting incidents at high schools in Santa Fe, Texas, and Parkland, Florida, it is increasingly clear that threats of violence against students or school employees must be taken seriously. Yet it can be difficult to discern between an off-hand comment and one that reflects an intention to inflict harm on others. Reportedly, under Michigan laws, prosecutors are often left having to choose between charging a defendant with a 93-day misdemeanor for disturbing the peace or a 20-year felony under the anti-terrorism law. Under the latter, a person can be prosecuted even if he or she had no intention or capability of carrying out the threat. It has been suggested that other options should be available to prosecutors for charging a person who threatens to use a gun or bomb, or other dangerous weapon, against a student or school employee.

According to testimony offered in committee, prosecutors do not have the appropriate tools when deciding how to charge an individual who makes threats involving dangerous weapons against students or school staff. Even if a threat appears idle, a clear message needs to be sent that violence, or even the threat of violence, is not a way to solve issues. However, when it is clear that the person had no dangerous weapons, or lacked knowledge

of how to use them, or that the threat may have come from a place of frustration or fear or even mental illness, charging a 20-year felony seems excessive.

The bills would address the situation by creating a 1-year misdemeanor penalty—stiff enough to be a deterrent yet likely to result in a community-based sanction, such as probation—if the threat lacked intent or capability to follow through. If the actions of the person showed a specific intent to carry out the threat, the penalty would be harsher, with a maximum term of imprisonment of 10 years, but still well below the 20-year sentence that a terrorism conviction could carry. Further, children 16 years of age and younger may be likely to be adjudicated in the juvenile court system under the bills and thus avoid a criminal conviction. Sanctions imposed are more community-based and promote rehabilitation. Besides probation, judges may also order individual or family counseling, substance abuse treatment, or community service, among other options. Such sanctions may enable underlying issues to be identified and addressed. For older students or young adults, a court could assign them to youthful trainee status under the Holmes Youthful Trainee Act (HYTA), which enables a defendant to avoid a criminal conviction upon successful completion of the sanctions imposed by the court (which may include jail, prison, or probation, or a combination of incarceration and probation). In short, the penalties provided by the bills retain the deterrent effect of the anti-terrorism laws yet provide more appropriate sentencing options for certain cases.

Though a step in the right direction, a concern has been raised that House Bill 5942 would infringe on a person's constitutionally protected right to free speech. To ensure no constitutional conflicts, it has been suggested that, for the misdemeanor penalty to apply, the person must have *intended* the statement as a threat and the threat must be reasonably interpreted to be harmful or adverse to life. This would further distinguish utterances made in the heat of a situation without thinking from statements made after some deliberation.

FISCAL IMPACT:

House Bill 5942 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of persons that might be convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation/parole supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5943 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

A representative of the Prosecuting Attorneys Association of Michigan (PAAM) testified in support of the bills. (5-29-18)

The following entities indicated support for the bills:

- Michigan Sheriffs' Association (5-29-18)
- Criminal Defense Attorneys of Michigan (CDAM) (5-29-18)
- Michigan Association of School Social Workers (5-29-18)
- Michigan Association of School Psychologists (5-29-18)
- Michigan Association of School Boards (5-29-18)
- Michigan Association of Superintendents (6-5-18)
- Michigan Association of Non-public Schools (6-5-18)
- Michigan Catholic Conference (6-5-18)

The ACLU of Michigan opposes the bill as written. (6-5-18)

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Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.