

EXPAND LIST OF SERIOUS MISDEMEANORS

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House Bill 5679 as introduced
Sponsor: Rep. Graham Filler
Committee: Judiciary
Complete to 1-31-22

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

SUMMARY:

House Bill 5679 would amend the William Van Regenmorter Crime Victim's Rights Act to expand the definition of *serious misdemeanor* to include additional misdemeanor offenses. The term includes a wide range of misdemeanor offenses and substantially similar local ordinances, such as domestic violence, assault and battery, breaking and entering, child abuse in the fourth degree, certain firearm violations, and certain drunk and drugged violations, among others. The bill would add to the list of crimes designated as a serious misdemeanor.

Beginning January 1, 2023, *serious misdemeanor* would include the following offenses, in addition to those currently designated under the act:

- Threatening an employee of the Department of Health and Human Services (DHHS) with physical harm. (MCL 750.81c(1))
- Leaving a child unattended in a car resulting in physical harm other than serious physical harm. (MCL 750.135a(2)(b))
- Vulnerable adult abuse in the fourth degree. (MCL 750.145n(4))
- Intentional retaliation or discrimination against an employee by a caregiver, licensee, or person with authority over a vulnerable adult. (MCL 750.145p(3))
- Embezzlement from a vulnerable adult of money or property with a value of less than \$200 (MCL 750.174a(2) or (3)(b)) or a value of at least \$200 but less than \$1,000 (MCL 750.174a(3)(a)).
- Willful and malicious destruction of personal property. (MCL 750.377a(1)(c) or (d))
- Willful and malicious destruction of a house, barn, or other building. (MCL 750.380(4) or (5))
- Buying or selling the identity or personal information of a patient. (MCL 750.410(2))
- Hazing in an educational institutional causing physical injury. (MCL 750.411t(2)(a))
- Withholding or refusing to produce court-ordered documents following a hearing, using force to prevent reporting of a crime committed by another person, or retaliation against a person for reporting or attempting to report a crime committed by another person. (MCL 750.483a(2)(a))
- Malicious use of a service provided by a telecommunications service provider. (MCL 750.540e)
- Moving violation causing death. (MCL 257.601d(1))
- Moving violation causing serious impairment of a body function. (MCL 257.601d(2))
- Employer discharge or discipline of a victim in violation of section 12, 40, or 72 of the William Van Regenmorter Crime Victim's Rights Act. (MCL 780.762, 780.790, or 780.822)

By expanding the list of crimes constituting a *serious misdemeanor*, the bill would indirectly increase the pool of persons constituting a "defendant" (person charged with or convicted of

committing a serious misdemeanor), “prisoner” (person convicted and sentenced to imprisonment for committing a serious misdemeanor against a victim), and “victim” (among other things, an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a serious misdemeanor) under the act.

In addition, an individual charged with a *serious misdemeanor* is ineligible to exercise the privileges and rights established for victims under the act.

MCL 780.811 and 780.811a

BACKGROUND:

Several statutes define *serious misdemeanor* to mean the term as it is defined in the William Van Regenmorter Crime Victim’s Rights Act or refer to another statutory provision that does so. Expanding the types of crimes designated as a serious misdemeanor would, to varying degrees, affect the application of these other statutes. Statutes that include a reference to *serious misdemeanor* as defined by the William Van Regenmorter Crime Victim’s Rights Act, or that refer to another provision that includes such a reference, include the following:

William Van Regenmorter Crime Victim’s Rights Act:

- Requires notification to be provided to a victim of a *serious misdemeanor*:
 - By a prosecutor if a juvenile applies to have a conviction or adjudication of a serious misdemeanor set aside. (MCL 780.796a)
 - By a law enforcement agency of the availability of pretrial release for the defendant. (MCL 780.815)
 - By a prosecutor if a defendant applies to have a conviction for a *serious misdemeanor* set aside. (MCL 780.827a)
- Requires notification to be provided to a victim if requested and to the prosecutor of an escape of a person accused, convicted, or imprisoned for committing a *serious misdemeanor*, as provided. (MCL 780.828b)
- Requires a law enforcement officer investigating a *serious misdemeanor* involving a victim to include with the complaint, appearance ticket, or traffic citation filed with the court a separate nonpublic, written statement that includes certain victim information. (MCL 780.62)
- Requires a law enforcement agency to give certain information to a victim of a *serious misdemeanor*. (MCL 780.813)
- Requires a law enforcement agency to return to the victim of a *serious misdemeanor* property belonging to the victim taken in the course of the investigation and to retain certain evidence. (MCL 780.814)
- Requires the court to notify the prosecuting attorney if a plea of guilty or nolo contendere is accepted at arraignment for a *serious misdemeanor* and, if a plea of guilty or nolo contendere was not already entered at arraignment, requires a prosecutor to offer the victim a consultation regarding the disposition of the *serious misdemeanor*. (MCL 780.816)
- Requires a sheriff to mail the victim of a *serious misdemeanor* certain information about a prisoner sentenced to imprisonment under his or her jurisdiction. (MCL 780.828a)
- Prohibits a person convicted of a *serious misdemeanor* from deriving profit from the sale of certain things until the victim receives restitution or compensation ordered for the victim or against the defendant, expenses of

incarceration are paid, and the balance of any proceeds from certain things held in escrow is paid as provided in the act. (MCL 780.831)

Mental Health Code:

- If a juvenile less than 18 years of age who is the subject of a delinquency petition is found by a court to be incompetent to proceed but may be restored to competency in the foreseeable future, the matter may be dismissed or may be suspended until the juvenile has been restored to competency if the offense is a *serious misdemeanor*. (If the offense is a misdemeanor other than a serious misdemeanor, the matter must be dismissed.) (MCL 330.2074(1)(a) and (b))

Wrongful Imprisonment Compensation Act:

- A prosecutor must notify the victim of a *serious misdemeanor* if the exoneree brings an action against the state seeking compensation for wrongful imprisonment. (MCL 691.1754)

Juvenile Code (Chapter XIIA of the Probate Code):

- If a person seeks to set aside an adjudication for a juvenile offense that would be a *serious misdemeanor* if committed by an adult, the prosecutor must notify the victim, if known. (MCL 712A.18e)
- If a juvenile is incompetent to proceed but the court finds he or she may be restored to competency in the foreseeable future, the court may dismiss the matter or suspend the proceedings against the juvenile if the offense is a *serious misdemeanor*. (If the offense is a misdemeanor other than a serious misdemeanor, the matter must be dismissed.) (MCL 712A.18s)

Michigan Penal Code:

- It is a crime to conceal material facts from a peace officer in a criminal investigation or to make false or misleading statements regarding a material fact in a criminal investigation. The penalty for a violation is based on the level or type of the crime being investigated. For an investigation of a *serious misdemeanor*, a violation is a misdemeanor punishable by up to 93 days in jail or a fine of up to \$500, or both. (MCL 750.479c)

Code of Criminal Procedure:

- With some exceptions, a police officer is required to issue to and serve upon a person an appearance ticket and release him or her from custody if he or she is arrested without a warrant for a misdemeanor or ordinance violation that has a maximum penalty of one year in jail or a criminal fine, or both. An appearance ticket *cannot* be issued for a person arrested for a *serious misdemeanor*. (MCL 764.9c)
- There is a rebuttable presumption that a court must sentence an individual convicted of a misdemeanor with a fine, community service, or other nonjail or nonprobation sentence. This presumption does not apply to a person convicted of a *serious misdemeanor*. (MCL 769.5)

1965 PA 213 (which pertains to setting aside convictions):

- An application to set aside one or more *serious misdemeanor* convictions can only be filed five or more years (instead of three years for a misdemeanor) after the last of certain events have occurred, such as completion of probation,

parole, or any term of imprisonment. In addition, the prosecuting attorney must notify the victim of the *serious misdemeanor* of the application to set aside the conviction. (MCL 780.621d)

- A conviction for a *serious misdemeanor* can only be set aside by application and is not eligible for automatic expungement. (MCL 780.621g)

FISCAL IMPACT:

House Bill 5679 would have an indeterminate fiscal impact on local units of government. Under the bill, certain offenses would be classified as serious misdemeanors. Individuals convicted of misdemeanor offenses can be sentenced with jail time, probation supervision, community service, drug/alcohol/mental health treatment, and/or penal fines, depending on the nature of the offense. Serious misdemeanors would likely result in longer lengths of time in jail and increased penal fine amounts. Also, individuals convicted of serious misdemeanors typically are not eligible for non-jail sanctions or to receive only fines. Therefore, the bill would result in increased costs related to county jails and increased penal fine revenue. Costs of local incarceration in county jails, and how those costs are financed, vary by jurisdiction. The increase in penal fine revenue collected would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

The bill would increase state expenditures to the Department of Health and Human Services (DHHS) an indeterminate amount and could have a fiscal impact on local units of government. The state fiscal impact of the bill would be dependent on an increase in eligible claimants due to the expanded definition of a serious misdemeanor to include crimes such as leaving a child in a vehicle, threatening a DHHS employee with physical harm, and retaliation or discrimination against an employee. The local fiscal impact would be dependent on the degree in which a local court dismisses or suspends juvenile competency hearings of individuals whose offense is a serious misdemeanor.

The bill also could result in various costs for law enforcement agencies for complying with provisions including communication requirements. The magnitude of these costs are indeterminate and would depend on caseload volumes.

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■ 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.