

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 50 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Judiciary

Date Completed: 2-18-97

RATIONALE

Under the Michigan Penal Code's "felony murder" provision, murder committed in the perpetration or attempt of certain listed felonies constitutes first-degree murder, which requires a sentence of life in prison without possibility of parole. The listed offenses include: arson; first-, second-, and third-degree criminal sexual conduct; first-degree child abuse; a major controlled substance offense; robbery; breaking and entering of a dwelling; first- and second-degree home invasion; larceny of any kind; extortion; and kidnapping. Public Act 191 of 1994 created in the Penal Code the felony of carjacking, which occurs when a person, by force or violence, by threat of force or violence, or by putting in fear, robs, steals, or takes a motor vehicle from another person, in the presence of that individual or in the presence of a passenger or any other person who is in lawful possession of the vehicle. Carjacking is punishable by imprisonment for life or for any term of years. Some people believe that, due to the serious and potentially violent nature of carjacking, that crime should be included in the list of offenses during which a murder constitutes first-degree murder and requires imprisonment for life without possibility of parole.

In addition, under the *common* law, felony murder includes a murder committed during the course of *any* felony. By enumerating specific offenses, Michigan's felony murder statute evidently supersedes the broad common law application of the felony murder rule, thereby limiting its use to murders committed during the course of those relatively few criminal offenses. Some people believe that, in addition to the specifically listed offenses, Michigan's felony murder provision should include murder committed during the course of any felony, to bring the State's felony murder statute into conformity with the common law application of felony murder.

CONTENT

The bill would amend the Michigan Penal Code to include carjacking or any felony in the Code's felony murder provision. The bill would add carjacking to the list of specific offenses included in the felony murder statute and specifies that murder committed in the perpetration or attempt of any felony would constitute first-degree murder.

The bill would take effect on June 1, 1997.

MCL 750.316

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

Carjacking is a violent and intrusive offense whose maximum penalty of imprisonment for life reflects the crime's seriousness. This is a crime whose occurrence has increased in the last 10 years or so and is one that many feel shocks the conscience of the community. Murder committed during the course of that offense should be treated as severely as is allowed under the law. The stiffest possible penalty imposed under Michigan law is imprisonment for life without possibility of parole. Premeditated murder constitutes first-degree murder and carries that penalty. Murder committed during the course of any of a list of specified offenses also constitutes first-degree murder and carries the penalty of imprisonment for life without possibility of parole. Carjacking should be included in that list of offenses.

Supporting Argument

Under the common law, murder committed during the course of any felony constitutes first-degree murder. Michigan's felony murder statute may actually limit the application of the felony murder rule, by listing specific felonies to which it applies.

By adding murder committed during the course of any felony to Michigan's felony murder statute, the bill would broaden the application of the felony murder provision, in conformity with common law.

Opposing Argument

If Michigan's felony murder rule is to apply to murder during the commission of any felony, it would seem unnecessary to list specific felonies. Perhaps the bill should delete the enumerated offenses and simply specify that murder during the course of any felony constitutes first-degree murder.

Response: If, for some reason, the courts struck down the application of the felony murder rule to the commission of any felony, that provision could be severable from the rest of the felony murder statute. Maintaining the specific list would leave the State with a felony murder provision in the event the broad application was overturned.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill could result in increased costs to the State. To the extent that offenders who commit a murder during the commission of any felony, are currently convicted of a felony other than first-degree murder, and receive a prison sentence other than life in prison, and who under the bill would receive a life sentence as required by the first-degree murder statute, costs of incarceration would increase. In 1995, there were 119 convictions for first-degree murder, as well as 202 for second-degree murder with an average minimum sentence of 20 years. Of the 785 murder offenses reported to law enforcement agencies in Michigan during 1995, 75 were reportedly committed during the commission of robbery, six during the commission of burglary, five during the commission of arson, and four during the commission of rape. In addition, 38 murders were reportedly committed during other felonies, and five were committed during the suspected commission of a felony. There is no information available, however, on how many of these individuals were convicted of first-degree murder, and how many were convicted of some other type of homicide (e.g., second-degree murder or negligent homicide).

Fiscal Analyst: M. Hansen

A9798\S50A

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.