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SFA



BILL ANALYSIS

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Senate Bill 342 (as reported without amendment)
Sponsor: Senator Art Miller, Jr.
Committee: Judiciary

Date Completed: 4-28-97

RATIONALE

Public Acts 260 and 261 of 1992 added the crimes of stalking and aggravated stalking to the Michigan Penal Code. Stalking is a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both. Aggravated stalking is a felony punishable by up to five years' imprisonment, a maximum fine of \$10,000, or both. A person who engages in stalking is guilty of aggravated stalking if the stalking actions are in violation of a restraining order and the individual has received actual notice of that order or the actions are in violation of an injunction or preliminary injunction; the stalking actions violate a condition of probation, pretrial release, or release on bond pending appeal; the course of conduct involves making one or more credible threats against the victim, a member of the victim's family, or another person living in the victim's household; or the defendant previously has been convicted of stalking or aggravated stalking. Some people believe that, if a stalking or aggravated stalking victim is a minor, the penalties should be more severe.

CONTENT

The bill would amend the Michigan Penal Code to provide for increased penalties for stalking and aggravated stalking if the victim were less than 18 years of age at any time during the offender's course of conduct.

Under the bill, if a victim of stalking were less than 18 at any time during the defendant's course of conduct, the offense would be a felony, rather than a misdemeanor, and would be punishable by up to five years' imprisonment, a maximum fine of \$10,000, or both, rather than up to one year's imprisonment, and/or a maximum fine of \$1,000.

If a victim of aggravated stalking were less than 18 at any time during the defendant's course of conduct, the offense would be punishable by up to 20 years' imprisonment, a maximum fine of \$20,000, or both, rather than up to five years' imprisonment and/or a maximum fine of \$10,000.

"Stalking" means "a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested". "Course of conduct" means "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts, evidencing a continuity of purpose". "Harassment" means "conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact, that would cause a reasonable individual to suffer emotional distress, and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose."

MCL 750.411h & 750.411i

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

Michigan's stalking laws currently do not include any distinctions regarding a victim's age. The maximum penalties are the same regardless of whether a victim is a child. This situation has come

to light in a series of stalking charges against one man in Macomb County.

A man in his mid-20s reportedly has harassed several teenage girls. According to testimony before the Senate Judiciary Committee by the mother of one of the teen victims, the man's attention toward his victim began in a flattering manner and he claimed in telephone calls to be a fellow high school student. When the victim realized he was an adult and apparently obsessed with female teen athletes, her efforts to rebuff his attention were met with intimidation, harassment, and threats. It turned out that the man had a history of stalking teenage girls and some of his calls even originated from the Macomb County jail, where he was serving a sentence on a previous stalking misdemeanor offense. Eventually, the Macomb stalker pleaded guilty to six charges of misdemeanor stalking, including the case discussed above. The court allowed him to enroll in an out-of-state treatment facility, rather than serve a jail sentence. He is now reportedly back at home in Macomb County serving time on a tether.

Since children generally are more vulnerable and impressionable than are adults, they are more susceptible to being victimized by stalkers, especially those with a teen obsession like the Macomb County man. The State has a responsibility to protect its children. Dealing more severely with stalkers when they victimized children would be one way to provide that protection.

Response: The Macomb County predator may deserve to be punished harshly, but the State should not enact what might be a questionable public policy in its broad application based solely on one horrendous case. Enactment of Michigan's stalking laws was a long and rigorous process and the violations have withstood constitutional challenge in their current form. Anything that might endanger the stalking laws' constitutionality should be approached with caution.

Supporting Argument

Some parents of other teen victims of the Macomb County stalker evidently were discouraged from pursuing prosecution of the stalker because of unwanted public attention in exposing actions that would be punished only as a misdemeanor. Also, although the stalker reportedly had previous convictions in separate jurisdictions, local police in other jurisdictions were unaware of his criminal record because the misdemeanor violations apparently were not recorded in the Law Enforcement Information Network (LEIN). Elevating a stalking violation to the felony level not

only would subject an offender to harsher penalties, but also could provide for better records of stalking a minor since the felony would be tried in circuit court rather than district court and a felony offense would be more likely to be entered in the LEIN system in a timely fashion.

Response: The Macomb County case appears to have been handled improperly. Since the offender apparently had previous stalking convictions, his course of conduct in subsequent stalking violations automatically qualified the offense as a felony of aggravated stalking. In addition, making one or more credible threats in a course of conduct that constitutes stalking raises the violation to aggravated stalking. His offenses should not have been treated as a misdemeanor. Further, as misdemeanor violations whose maximum penalty is greater than 92 days' imprisonment, the man's previous stalking convictions should have been entered in the LEIN system. If this had been done properly, local law enforcement officials should have known that subsequent stalking offenses were felonious.

Opposing Argument

Increasing the penalties for stalking in all cases in which the victim was under 18 could elevate some seemingly minor violations to offenses that could receive severe penalties. For instance, if the situation involved a male who had just turned 18 and his 17-year-old ex-girlfriend, the stalking activity should be punished but perhaps not with a five-year felony. In addition, there have been cases in which both the victim and the offender were under 18; the most glaring example involved a 10-year-old boy who made hundreds of telephone calls to an eight-year-old neighbor girl. Perhaps enhanced penalties should apply only when the offender was an adult and at least three, or even two, years older than his or her victim. There is precedence in Michigan law for applying an age-range factor to penalties. Distribution of a controlled substance, fourth-degree criminal sexual conduct, and incest all use that approach.

Response: A judge likely would consider relative age and a previous dating relationship when weighing sentencing guidelines factors. Also, prosecutors have great discretion when deciding on what charge to allege in a criminal complaint and could consider those types of factors. If an offender were a juvenile, the case could be handled in juvenile court, not as a criminal matter in circuit court.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. According to circuit court disposition data, in 1995, there were 161 convictions for aggravated stalking, 35 receiving a prison sentence, with an average minimum sentence of about two years. There were also four convictions for stalking in circuit court, each receiving a sentence of either probation or jail. There are no data currently available, however, that provide the age of the victim in those convictions.

If one assumed that 10 of the 161 convictions for aggravated stalking in 1995 involved victims under the age of 18, and that this number would continue in the future, and that judges would impose the new maximum penalties allowed under the bill at or near 40% of the allowable maximum (40% of 20, or 8 years), then annual costs of incarceration associated with the increased penalties could approach \$900,000 (10 annual commitments x 6 additional years of incarceration x \$15,000 per year).

Given that the current stalking offense is a misdemeanor, most of the convictions are processed through district court. It is difficult to predict what effect raising the offense to a felony would have for cases in which the victim is under 18 years of age. If the enhanced penalty resulted in an increase in annual prison commitments of 10 offenders, each receiving a two-year sentence, annual costs for the Department of Corrections could increase by approximately \$300,000.

Fiscal Analyst: M. Hansen

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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.