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SFA

BILL ANALYSIS

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House Bill 4444 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Representative Candace Curtis
House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

The bill would amend the Michigan Penal Code to raise the felony threshold level and increase the penalties for various larceny offenses, and to create the misdemeanor of third-degree retail fraud and increase the threshold and penalties for felony first-degree retail fraud and misdemeanor second-degree retail fraud. The bill would take effect on January 1, 1999, and is tie-barred to House Bills 4445 and 4446.

Under the bill, various offenses would be punishable by graduated maximum penalties, depending on the value of the property involved in the offense and prior convictions. Values of property stolen in separate incidents pursuant to a scheme or course of conduct within any 12-month period could be aggregated to determine the total value of property stolen. The offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$15,000 or three times the value, whichever was greater, if the value were \$20,000 or more or if the value were \$1,000 or more but less than \$20,000, and the person had two or more prior felony convictions. The offense would be a felony punishable by up to five years and/or \$10,000 or three times the value, whichever was greater, if the value were \$1,000 or more but less than \$20,000, or if the value were \$200 or more, but less than \$1,000, and the person had one or more prior convictions. The offense would be a misdemeanor punishable by up to one year and/or \$2,000 or three times the value, whichever was greater, if the value were \$200 or more but less than \$1,000, or if the value were less than \$200 and the person had one or more prior convictions, including a violation of a local ordinance substantially corresponding to the offense. The offense would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the value, whichever was greater, if the value were less than \$200.

Currently, the felony of first-degree retail fraud involves property or money valued at over \$100 and the misdemeanor of second-degree retail fraud involves property or money valued at \$100 or less. Under the bill, the felony of first-degree retail fraud would involve property or money valued at \$1,000 or more; the misdemeanor of second-degree retail fraud would apply if the value were \$200 or more, but less than \$1,000; and the new misdemeanor of third-degree retail fraud would apply if the value were less than \$200. First-degree retail fraud would be punishable by up to five years' imprisonment (rather than two years) and/or a maximum fine of \$10,000 or three times the value (rather than a fine of up to \$1,000). Second-degree retail fraud would be punishable by up to one year's imprisonment (rather than 93 days) and/or a maximum fine of \$2,000 or three times the value (rather than a fine of up to \$100). Third-degree retail fraud would be punishable by up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the value, whichever was greater.

MCL 750.356 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and local government for the costs of incarceration of offenders and receipt of fine revenue.

The bill would create threshold tests including dollar value of property and the prior record of the offender to determine the maximum prison term and fine level for crimes such as larceny, malicious destruction, retail fraud, and receiving stolen property. Under current law, most of these crimes carry a four- or five-year maximum sentence and minimal fine levels.

In 1996, the Department of Corrections (DOC) had 1,819 offenders in custody for violations of the sections of law being amended by the bill. No aggregate data are available, however, on the dollar value of the property that led to each commitment. In general, half of the offenders have minimum sentences of one- to two-years, and half have three- to four-year minimum sentences. Under current practice (the Tanner Rule), 3.5 years would be the longest minimum sentence a judge could prescribe. If one assumed that the offenders with shorter minimum sentences represent convictions for small dollar value crimes, about half of the offenders currently incarcerated could have qualified for shorter prisoner terms or community placement under the proposed bill. To the extent that the offenders with longer minimum sentences have convictions for larger dollar value crimes, maximum sentencing for these offenders would remain constant or increase.

For example, in 1996, there were 512 prisoners incarcerated for receiving stolen property, of whom 51% were serving one- or two-year minimum sentences, and 13% were serving four-year minimum sentences. Assuming that pursuant to the bill, the one- or two-year minimum sentence offenders would not be sentenced to prison at all and that they otherwise would serve the full minimum term (under current law), the State would realize cost savings, given an average cost of incarceration of \$18,000 annually, of \$8.2 million. Assuming that the offenders with four-year minimum sentences instead received a minimum sentence of 7.5 years (because of the proposed increased maximum for high dollar value crimes in the bill), the State would incur additional costs of \$4.3 million. The net cost savings to the State under these assumptions, would be \$3.9 million. Local government, however, would assume responsibility for costs for offenders who were sentenced locally.

The increase in fines proposed in the bill also would provide judges with other nonprison sentencing options that could reduce prison commitments or increase fine revenues.

Date Completed: 6-3-98

Fiscal Analyst: K. Firestone

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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.