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## “PROJECT EXILE”: CREATE A FELONY FIREARM ENFORCEMENT COORDINATING COMMISSION

House Bill 5744 as passed by the House  
Second Analysis (8-16-00)

Sponsor: Rep. Jim Howell  
Committee: Constitutional Law and Ethics

### ***THE APPARENT PROBLEM:***

As the expression of public concern over gun violence mounts, such as the recent Mother’s Day “Million Mom March” on Washington D.C., public pressure on public officials to do something about gun violence also mounts. One approach to dealing with gun violence favored by various groups advocating for gun ownership is to advocate better enforcement of existing gun laws. In 1997, the U.S. Attorney’s office in Richmond, Virginia, developed and carried out a program called “Project Exile” aimed at gun violence in that city, taking the name from the idea that if the police caught a criminal in Richmond with a gun in a crime, the criminal would have forfeited his right to remain in the community and upon conviction would be “exiled” to a federal prison (which often is not in the state in which the defendant is convicted) for a mandatory minimum sentence of five to ten years. Earlier this year, the state of Texas implemented a statewide program, called “Texas Exile,” which is based on the Richmond, Virginia, program.

Some people believe that elements of these “exile” programs should be implemented in Michigan, and legislation has been introduced that would do this.

### ***THE CONTENT OF THE BILL:***

The bill would create a new act to establish a “Project Exile Coordinating Commission” and a “Project Exile Fund” that would provide information, training, technical assistance, grants, and loans to law enforcement agencies and county prosecuting attorneys in order to coordinate criminal prosecutions under Michigan or federal felony firearms laws.

Commission duties. The bill would require the commission to provide all of the following to law enforcement agencies and prosecuting attorneys:

- Information and training regarding federal and Michigan firearms laws and the penalties for violating these laws;
- Information, training, and technical assistance to coordinate felony criminal prosecutions under federal and Michigan firearms laws;
- Grants and loans (1) to implement the above information, training and technical assistance; (2) to hire additional prosecutors, law enforcement agents, or other personnel or to provide equipment or supplies to coordinate criminal prosecutions under Michigan or federal firearms laws; and (3) to increase public awareness of the coordination of those criminal prosecutions.

In addition, the bill would require the commission to ensure that the efforts taken to coordinate criminal prosecutions described in the bill weren’t made with racially discriminatory intent. In order to do this, the commission would be allowed to consult with, and seek the assistance of, the state Civil Rights Commission.

Commission membership and operation. The bill would create a three-member “Project Exile Coordinating Commission” in the Department of State Police. Commission members would include the attorney general or her or his designated representative, the director of the Department of State Police or his or her designated representative, and one county prosecuting attorney, appointed by the governor. The county prosecuting attorney would have to be appointed within 60 days after the bill was enacted, and would serve for two years or until a successor was appointed, whichever was later. The governor could remove his or her appointee for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause, and would appoint a replacement if a vacancy occurred.

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The commission would have to meet for the first time within 90 days after the bill took effect, at which time it would elect a chairperson and other officers it considered necessary or appropriate. After the first meeting, the commission would have to meet at least quarterly, or more frequently at the call of the chair or if requested by two or more members. A majority of the members would constitute a quorum for the transaction of business at a commission meeting, and a majority of the members present and serving would be required for official commission action. Commission business would have to be conducted at public meetings in compliance with the Open Meetings Act, and commission writings would be subject to the Freedom of Information Act. Commission members would serve without compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as commission members.

The Project Exile Fund. The bill would create a "Project Exile Fund" in the state treasury. The state treasurer would direct the investment of the fund, and credit to the fund interest and earnings from fund investments. Money in the fund at the end of the fiscal year would remain in the fund and not lapse to the general fund. The Project Exile Coordinating Commission would spend money from the fund only to provide the information, training, technical assistance, and funding to law enforcement agencies and prosecuting attorneys as delineated in the bill's provisions.

Annual Report. The commission would be required to file an annual report with the Secretary of the Senate and the Clerk of the House that disclosed all of the contributions to and expenditures from the fund and the number of arrests made for felony firearm violations in the state and the disposition of those cases. The information provided on felony firearm violations would be broken down on a geographical basis.

Effective date. If enacted, the bill would take effect on September 1, 2000.

### ***BACKGROUND INFORMATION:***

Richmond, Virginia, "Project Exile." Conceived in November 1996 and announced on February 28, 1997, Richmond, Virginia's Project Exile is an expedited federal prosecutive effort by the United States Attorney's Office, the federal Bureau of Alcohol, Tobacco and Firearms (BATF), and the Federal Bureau of Investigation, in coordination with the Richmond Commonwealth's Attorney's Office and the Richmond

Police Department, and the Virginia State Police to combat Richmond's gun violence problem.

According to the executive summary provided by the Richmond Division of the United States Attorney's Office for the Eastern District of Virginia, gun violence has plagued Richmond for at least ten years, and has been the result of a number of factors including the link between guns and drugs, a greater willingness of some people to carry weapons, and an increasing incidence of domestic violence. The violence has grown each year, routinely placing Richmond among the five cities in the country with the worst per capita murder rates.

The project integrated and coordinated local police, state police, federal investigators in the BATF and FBI, and local and federal prosecutors, to promptly arrest, incarcerate, detain without bond, prosecute and sentence the armed criminal. An expedited reporting system was developed that decreased processing time from several months down to several days, while bond was routinely and successfully opposed in court, where mandatory minimum sentences were obtained for convictions. The project quickly, efficiently, and successfully prosecuted a large number of gun crimes, with a significant impact on criminal behavior. In one year, as of June 30, 1998, 311 individuals had been indicted for federal gun violations, 374 guns had been seized, 259 people had been arrested or were in state custody, 200 arrestees had been held without bond, 202 people had been convicted, and 144 people had been sentenced, with an average sentence of 56.7 months.

As part of Project Exile, the U.S. Attorney's office also carried out a training program for Richmond Police Department officers on federal firearms statutes and on search and seizure issues, and worked with police management to improve case report forms. In order to expedite the handling of project cases, the police firearms office also was electronically connected to BATF to arrange immediate tracing of seized firearms.

Finally, a major component of the project was an innovative outreach and education effort through various media to get the message to the criminals about this crackdown, and to build a community coalition directed at the problem. A coalition of business, community, and church leaders, along with organizations such as the Retail Merchant's Association, was assembled to promote the project. The 1997 media efforts carried the message "An illegal gun will get you five years in federal prison," and asked citizens to anonymously report guns on the street to the Metro Richmond Crime Stoppers telephone number. Media efforts included 15 billboards, a fully painted

city bus, TV commercials, 15,000 business cards distributed on the street by local police, and print advertising. In 1998, in addition, a radio campaign was added. In addition to the \$40,000 raised in 1997 and the \$100,000 raised or committed in 1998, the outreach efforts also included substantial in-kind matching contributions of services and media time.

“Texas Exile.” The state of Texas also has implemented a program called “Texas Exile,” which is modeled after Richmond, Virginia’s “Project Exile,” and which is designed to reduce gun violence by getting guns off of the streets and out of the hands of criminals. According to an overview of the Texas program provided by the office of the Texas attorney general, the program is a broad-based community effort involving close coordination among local, state and federal law enforcement to promptly arrest, incarcerate, detain without bond, prosecute and sentence the armed criminal with the goal of having a significant impact on criminal behavior involving firearms.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would increase state costs to the extent that the legislature appropriated funds to the Project Exile Fund and would increase local revenue to the extent that the commission awarded grants to local agencies. There could also be costs associated with reimbursing commission members for expenses incurred in performing their official duties, as provided for in the bill, and the Department of State Police would incur indeterminate costs in providing for the administration of the commission. Also, depending on the number of individuals convicted under federal firearms laws due to the program, there would be an indeterminate impact on state and local correctional costs. (5-17-00)

### ***ARGUMENTS:***

#### ***For:***

Gun violence is of increasing concern to the general public, and all over the country attempts are being made to grapple with the havoc wreaked by gun violence. The shocking school shootings that have swept across the country in recent years have served to increase public concern, and the recent “Million Mom March” in Washington, D.C., on Mother’s Day is just one more expression of the level of public concern over this issue. Some people believe that rather than enacting more gun laws, the issue of gun violence can be dealt with by enforcing existing state and federal gun laws more rigorously. In particular, some people

believe that focusing on enforcing laws, particularly at the federal level, that prohibit felons from carrying firearms can be an effective way of deterring gun violence by criminals.

The “Project Exile” program implemented by the city of Richmond, Virginia (see BACKGROUND INFORMATION), has been held up as a model for other cities and for entire states to emulate as a successful program that has produced some impressive statistics. In just one year of sustained efforts, according to the U.S. Attorney’s office, more than 202 armed criminals have been removed from the city’s streets, one violent gang responsible for many murders has been destroyed, and the rate of gun carrying by criminals has been cut nearly in half (as evidenced by comparing statistics regarding guns seized in routine police encounters before and after the program was implemented). Anecdotally, officers also now report drug dealers throwing down weapons before running instead of risking being caught with the weapons, and police report that in interrogation defendants comment specifically on Project Exile in giving up important information on serious crimes, including a large number of homicides that have been solved with information obtained from defendants in these cases. Most importantly, these efforts appear to be stemming the tide of violence, with homicides for the period November 1997 through May 1998 running more than 65 percent below the same period one year before, while in the same period of time, armed robberies dropped by approximately 30 percent. The community benefits not only by the removal of armed criminals from the city, but by the fact that other criminals are leaving their weapons at their residences, which makes lethal violence less likely to occur, and by the fact that once prosecuted, criminals are providing information on serious crimes that the police would not otherwise obtain, which increases the likelihood that multiple other crimes will be solved. The city also benefits financially, insofar as the single biggest factor given in business surveys concerning corporate relocations or expansions is the business leaders’ fear of crime, so that addressing violent crime presumably will foster economic growth and the additional jobs generated presumably will aid in further reducing crime. In fact, a national June 1998 survey of “The Best Places To Live In America” listed Richmond number one in its size category, with the second most important factor in the survey being “low crime.” The year before, Richmond was ranked 160th in the same survey. Finally, the city and its residents benefit by the reduction in the acceptance of violence as a part of life. Having an effective means of dealing with armed criminals by reporting them through the mechanism

established by the program, and having the certainty that the criminal will face immediate prosecution and lengthy prison terms, reverses both the acceptance of violence and the accompanying apathy. In the year before and after implementation of the Richmond program, two polls showed a more than 10 percent increase – from 41 percent to 52 percent – in the percentage of Richmond residents who indicated that they felt that crime in their neighborhoods was either “not very serious” or “not serious at all.

The success of the Richmond program has resulted in plans to expand it to the Norfolk, Virginia, area, and the state of Texas has come up with its own, statewide program that it plans to implement for two years. The Texas program will be a joint effort, including training, with U.S. attorneys offices, the state district attorneys’ offices, and state, local, and federal law enforcement agencies. It is anticipated that prosecutions under the project will have a significant impact in the reduction of gun violence statewide by targeting criminals who use and carry weapons while at the same time protecting law abiding citizens. Once the program is successfully implemented, the state reportedly plans to propose new legislation in order to strengthen Texas state laws in order for the state to be able to prosecute the Texas Exile program more effectively in state court.

### ***Against:***

Opponents of the bill raise a number of objections:

- Statistics. Despite the optimism of proponents of the rhetorically named “exile” programs, there appear to be, as yet, no solid and meaningfully comparable statistics to support this optimism. At the same time, anecdotal evidence and catchy slogans are quoted in support of the programs. The July 1998 U.S. attorney’s report on Richmond’s “Project Exile,” for example, says that homicide reduction is “the single clearest measure of Project Exile’s removing armed criminals from the streets of Richmond” and quotes an over 50 percent reduction in the carrying of guns by criminals. At the same time, the very same report points out that the gun seizure totals (upon which this statistic is based) were affected by a number of changes to variables that makes assessing the effectiveness of “Project Exile” in this regard difficult. These other things include, for example, the fact that federal authorities were successful in a number of cases which resulted in abnormally high firearms seizures and the fact that Richmond police conducted a crackdown on guns involving road checkpoints and other law enforcement activities which resulted in “abnormally high” firearms seizures. In another example, proponents of “exile” projects point to a 40 to 50

percent reduction in violent crime in Richmond since the city’s “Project Exile” was implemented, implying that the reduction is due all, or in large part, to the program. And yet, the rate of violent crime generally is falling nationwide. And Norfolk, Virginia, which is near Richmond and reportedly has a population similar to Richmond’s, saw a 43 percent decrease in its violent crime rate without such a program in place. Finally, at least one preliminary review of the Richmond data by a Virginia Department of Criminal Justice Statistics criminologist and statistician reportedly indicates that the decline in violent crime rates is more likely attributable to other law enforcement programs already in place at the time “Project Exile” was implemented. The selective use of statistics is tempting in any debate, but in order for meaningful claims to be made, more than just isolated, “bare” statistics need to be offered, particularly in an area as complex as crime and purported crime reduction.

- Mandatory minimums. While proponents of so-called “exile” programs claim that federal mandatory minimum prison terms will act to deter firearm violence, evidence for the effectiveness of mandatory minimums as a deterrent is mixed at best, and in some cases the evidence seems clearly to indicate that mandatory minimums have no deterrent effect.

- Disparate impact. Although there is no clear evidence that either state or federal mandatory minimums are effective in deterring crime, there is ample clear evidence that such policies do have a disparate impact on racial African Americans and Hispanic people. For example, African Americans make up 19 percent of the Virginia population, but 90 percent of the defendants prosecuted under Richmond’s “Project Exile.” Perhaps equally chillingly, Richmond prosecutors reportedly admitted that they used their prosecutorial discretion under the “Project Exile” program to keep the predominantly African American defendants away from predominantly African American Richmond juries by steering minority defendants to federal courts. Whereas Richmond juries are 75 percent African American, federal juries are 10 percent African American.

- Expense to taxpayers. Implementing costly mandatory incarceration for programs not objectively proven to be effective in deterring crime is a waste of taxpayers money. At an average cost of \$22,000 per federal prisoner per year, each five-year federal mandatory prison sentence costs taxpayers \$110,000 in incarceration costs alone, which does not include court and law enforcement costs. Figures from the federal mandatory minimum drug sentences enacted in 1986

show that the federal Bureau of Prisons budget increased 1,700 percent and the federal drug offenders sentenced under mandatory sentencing costs taxpayers \$1.67 billion a year. If politicians are serious about reducing costs to taxpayers, they will look for effective, innovative programs that do not perpetuate continued growth in the prison industry that has so far not proven effective.

- “Federalism.” For those who are or have been concerned with the incursion of federal authorities into state’s rights – including those who have extensively criticized the role and actions of the federal Bureau of Tobacco, Alcohol, and Firearms (BTAF) in recent years – the so-called “exile” programs have the potential to further a startling incursion of federal power into what properly is an area best handled in state courts. Given, moreover, the bill’s vagueness and lack of specificity, there would appear to be little to prevent federal prosecutors from deciding that county prosecutors weren’t handling firearms cases satisfactorily, and so to intervene to take over prosecution of what has been and still is a significant area of state and local control. Won’t the bill just make it easier for the federal government to intrude into what are, rightfully, state’s rights and responsibilities? Would the bill result in federal – or even state – takeover of local decision making in yet another area?

- Sixth Amendment. The bill recognizes that coordinating the prosecution of gun offenses under state and federal law is so complicated that it requires special training, information sharing, and technical assistance for law enforcement agents and prosecutors, and yet it does not provide similar resources for the defense of the accused in these situations. The U.S. Constitution’s Sixth Amendment guarantees the right to the effective assistance of legal counsel, and the integrity of the adversarial legal system depends on both sides being competently represented. The vast majority of defendants are indigent and must be represented by assigned counsel, paid for at public expense, and yet most Michigan counties do not have public defender offices. Instead, the counties assign individual private attorneys to represent indigent defendants, usually at rates of pay far below that paid to assigned counsel in federal court. Given that many, if not most, Michigan assigned counsel do not practice in federal court and are not familiar with federal law and procedure, will Michigan assigned counsel be expected to represent Michigan defendants when state cases are referred to federal court or will there be costs charged back to the referring counties? Who will train defense counsel on state and federal firearms laws and on the complexities of defending against a joint state-

federal prosecution? If a defendant is being prosecuted in both state and federal court on charges arising from a single incident, will different counsel be assigned in each jurisdiction (which would require both coordination and duplication of effort)? Since the proposed “Project Exile Commission” has no defense representative, only law enforcement and prosecutors, who would be responsible for ensuring that adequate defense services are provided and that there is the requisite expertise to do so? If funding is to be awarded to (unspecified) agencies to hire additional prosecutors and law enforcement personnel, will similar resources be added to the defense side of the legal system? Current reports of innocent people who have spent years on death row, often because of inadequate representation by poorly paid and overworked defense counsel – not to mention the Illinois governor’s decision to suspend executions until this very issue can be addressed – graphically illustrate the importance that every defendant, not just the wealthy, be competently represented by well-trained counsel with adequate resources. The bill would not appear to do this.

- Other unanswered questions. The bill would create broad prosecutorial discretion to prosecute some defendants for some firearms offenses in federal court, while other defendants would remain in state courts, but the bill does not set any criteria for the exercise of this discretion and doesn’t even require that any such standards be developed. Not only does this raise questions about the potential for widely disparate treatment of similarly situated defendants, it also raises questions about how such prosecutions would be carried out in practice. For example, there are at least 15 different firearms offenses that are felonies under Michigan law. How do Michigan gun laws compare to federal gun laws, both in their substance and in their penalties? Which offenses would be prosecuted federally, and, if not all instances of the same offense weren’t referred for federal prosecution, who would decide and on what grounds? Would each county prosecutor have complete discretion to make referrals, or only those in counties with “Project Exile” funding to train or hire special prosecutors? Will there be criteria for, or oversight of, how this prosecutorial discretion would be exercised? Would there be any safeguards to protect defendants against federal sentences that were widely disparate from those imposed on other Michigan defendants under state sentencing guidelines or that were grossly disproportionate to those mandated by Michigan law? If a defendant had both state and federal charges pending from the same incident, wouldn’t the processing of separate but related charges in state and federal court result in duplication of effort, scheduling

conflicts, and substantial extra costs? Where will the money come from?

***POSITIONS:***

The Department of Attorney General supports the bill. (8-10-00)

The Michigan Coalition for Responsible Gun Owners supports the bill. (8-10-00)

The Department of State Police is taking a neutral position on the bill. (8-14-00)

Families Against Mandatory Minimums opposes the bill. (8-14-00)

The Criminal Defense Attorneys of Michigan opposes the bill. (8-16-00)

Analyst: S. Ekstrom

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