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Senate Bill 1041 (as reported without amendment)
Senate Bill 1042 (Substitute S-1 as reported)
Sponsor: Senator Joanne G. Emmons
Committee: Judiciary

Date Completed: 4-6-00

RATIONALE

Under the Michigan Penal Code, an individual is considered to be a disorderly person if he or she meets any of several conditions. One of those conditions is being a window peeper. The Penal Code provides that being a disorderly person is a misdemeanor but does not specify a penalty (which means that it is punishable by up to 90 days' imprisonment and a maximum fine of \$100).

A recent case in Isabella County has led some to believe that the window peeping charge and penalty may be in need of revision. A man was apprehended on a rural road, where he was looking through a distant window into a girl's bedroom using binoculars and a zoom-lens video camera. He was charged with two counts of disorderly person/window peeping because police found a video he had taped on a previous occasion. The first charge, for the act during which the man was arrested, was dismissed because of an 1897 court case that apparently established that, to be charged with window peeping, a perpetrator must have ventured onto private property (*City of Grand Rapids v Williams* (112 Mich 247), described below in **BACKGROUND**). In the Isabella County case, the man was on a public roadway. The second charge, for the previous videotape, was allowed to stand apparently because his use of a zoom lens effectively brought the man within a distance that would constitute a trespass on private property. The man was convicted of this offense and ordered to pay a \$100 fine plus court costs; he was not sentenced to jail time, probation, or court-ordered counseling.

Some people believe that the disorderly person offense should apply in the case of window peeping regardless of whether the offender is on public or private property or is trespassing, and that the violation should carry a greater penalty than is currently allowed, particularly if the victim is a minor.

CONTENT

Senate Bills 1041 and 1042 (S-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to revise window peeping penalties, make the offense a felony if the victim were a minor, and include that felony offense in the sentencing guidelines. The bills would take effect 90 days after their enactment, and Senate Bill 1042 (S-1) is tie-barred to Senate Bill 1041.

Senate Bill 1041

The bill specifies that window peeping would constitute being a disorderly person regardless of whether the person was trespassing or was on public or private property at the time of the violation. Under the bill, being a disorderly person by virtue of window peeping would be a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$500, or both, if the victim were 18 years of age or older. If the victim of the window peeping were under 18 years of age, the violation would be a felony punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

Senate Bill 1042 (S-1)

The bill would include in the Code of Criminal Procedure's sentencing guidelines provisions the felony offense of window peeping, as proposed by Senate Bill 1041. The violation would be listed as a Class F felony against the public order with a statutory maximum sentence of four years' imprisonment.

MCL 750.167 & 750.168 (S.B. 1041)
777.16i (S.B. 1042)

BACKGROUND

In the 1897 case, *City of Grand Rapids v Williams*, a man was convicted of a disorderly person ordinance violation for window peeping that constituted

indecent, insulting, or immoral conduct or behavior. The man left a public sidewalk and approached a window of a house, about six feet from the sidewalk, leaned on the window sill, and peered into the window of a room where people were present, for about two minutes. The room was lighted and the window shade was six to 12 inches above the window sill.

After testimony in the man's trial, the judge instructed the jury: "It is no offense for a person walking along on the sidewalk, and without trespassing upon the premises of another, to look through an uncurtained window or a window partially covered with a curtain. But if a person steps off the sidewalk, not at the usual approaches or walks to a house, and for no legitimate purpose, and without the consent and against the will of the owner, in such case he may be a trespasser and wrongdoer; and if, after so trespassing, he proceeds to a window with a curtain raised from five to twelve inches, and leans upon the window sill, and with no legitimate purpose in so doing, such peeking in at such window so shaded by curtains at 11 or 12 o'clock at night may, in law, be said to be peeking into the window." Since the man stepped off the sidewalk and trespassed on private property, he was found guilty of the violation as described by the court's instructions to the jury.

On appeal, the Michigan Supreme Court found that the verdict of the jury was justified by the evidence and the judgment was affirmed.

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

The misdemeanor offense of being a disorderly person by means of window peeping may seem to be a rather innocuous violation. As demonstrated by the case of a man spying on and videotaping a girl in Isabella County by use of binoculars and a zoom video lens, however, the offense also can be an egregious violation of privacy. Certainly, a victim of this crime is violated by the perpetrator even though the victim may not actually be physically harmed or verbally threatened. Moreover, the act of surreptitiously peering into someone's private window, especially if that person's actions are videotaped, may suggest that the victim of window peeping could be in danger of further harm or harassment. By increasing the maximum sentence for this particular disorderly person violation, and making it a felony with a four-year maximum sentence if the victim were a minor, the bill would recognize the seriousness of this offense, the vulnerability of the victim, and the potential for further victimization beyond the actual voyeurism.

Supporting Argument

In the Isabella County window peeping case discussed above, one charge of being a disorderly person by window peeping was dismissed because, even though the man was caught in the act of observing and videotaping a girl through the window of her home, the man was on a public roadway and not trespassing on private or public property. According to the Isabella County Prosecuting Attorney, the dismissal resulted from an 1897 Michigan Supreme Court decision upholding jury instructions delivered by a court in a window peeping case in Grand Rapids. Since that court told the jury that the charge applied if the defendant left a public sidewalk and entered onto private property to peer through a window from a close vantage point, the court in Isabella County ruled that a window peeping charge did not apply because the defendant did not leave the public roadway or trespass on private property.

The ease of use and widespread availability of view-enhancing instruments like binoculars and zoom lenses likely was not foreseen by the 1897 Grand Rapids court, but is obvious today. Applying the nineteenth century standard of entering onto private property in close proximity to a window in order to warrant a charge of window peeping seems to make little sense now. The man charged in Isabella County obviously intended to invade the privacy of the homeowners and the girl observed through a window, even though he never closely approached the home. The bill would correct this now-archaic element of the window peeping offense by specifying [A9900\sb1041a](#)

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that a violation would occur regardless of whether the perpetrator was on public or private property or was trespassing.

Response: The bill should include greater clarification of what constitutes window peeping. Allowing that charge to be applied regardless of whether a person was on public property could lead to confusion about what amounts to window peeping. For instance, under the bill a person who happened to be walking by a house on the sidewalk and inadvertently glanced toward the window of a lighted room could conceivably be charged with a window peeping violation even though the person had no improper intent. In addition, viewing someone washing the dishes through his or her kitchen window or performing paperwork in an office building or home den might not rise to the same level of objection as watching someone disrobe. Perhaps the bill should include a definition of window peeping based on an intent to invade a person's privacy.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 1041 and 1042 (S-1) would have an indeterminate fiscal impact on State and local government.

There are no statewide data available on the number of offenders convicted of the misdemeanor crime of disorderly conduct, or the age of victims of window peeping. Also, there are no data available to indicate how many offenders could be convicted of window peeping, as newly defined. Local units of government receive the fine revenues or incur the costs of incarceration for misdemeanor offenses as well as felony offenses with terms of incarceration less than 13 months.

The minimum sentencing range for a Class F offense (which would apply to window peeping involving a victim under 18) is 0-3 months to 17-30 months. If one assumed that five offenders a year were convicted of window peeping involving a victim under 18 years of age, and received the highest minimum sentence, given that the average cost of incarceration in a State institution is \$22,000 per year, the cost to the State would increase \$275,000 for incarcerating these felons. If the offender received the lower minimum sentence, local units of government would incur the cost of incarceration or intermediate sanctions.

Fiscal Analyst: K. Firestone