



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

ASSAULTING OFFICERS

**House Bill 5440 (Substitute H-2)
Sponsor: Rep. Jennifer Faunce**

**House Bill 5441 (Substitute H-1)
Sponsor: Rep. Larry Julian**

**House Bill 5442 (Substitute H-2)
Sponsor: Rep. Jerry O. Kooiman**

**House Bill 5443 (Substitute H-2)
Sponsor: Rep. Raymond Basham**

**House Bill 5444 (Substitute H-2)
Sponsor: Jim Howell**

**First Analysis (1-31-02)
Committee: Criminal Justice**

THE APPARENT PROBLEM:

Law enforcement is by its nature a potentially dangerous profession, and officers accept the risk that injury may occur in the performance of their duties. Currently, a person convicted of assaulting or battering a police officer while the officer is making a lawful arrest can be sentenced to up to two years imprisonment or a fine of not more than \$1,000, or both. However, this penalty applies whether the officer received a minor bruise or was hospitalized with serious or life-threatening injuries. Many feel that the penalties for assaulting a police officer who is performing his or her duties should be increased according to the seriousness of the injury inflicted.

In a related matter, many other professions connected to law enforcement, such as court personnel, probation and parole officers, city attorneys, and others also on occasion are assaulted in the course of performing their job duties. In one instance, an Oakland County probation officer was assaulted by a probationer whom he was interviewing. When the county prosecutor went to prosecute the probationer, unlike the provisions adding additional penalties for assaulting police officers or Family Independence Agency workers, he saw no law under which to charge the individual – other than the general assault penalties. Some feel that a separate penalty should be established for those who injure employees who work in the criminal justice system, but who are not peace officers.

In a separate matter, in addition to being subject to assaults in the performance of their duties, law enforcement officials investigating crimes also at times have to deal with relatives or friends of suspects who deliberately give false information or try to hide the suspect from being arrested by destroying evidence or hiding the suspect. Legislation has been offered to prohibit conduct that hinders investigation, arrests, and prosecution of suspected criminals.

THE CONTENT OF THE BILLS:

House Bills 5440 and 5442 would amend the Michigan Penal Code to, among other things, increase penalties for causing bodily injury to peace officers and other governmental officers, respectively; the bills are tie-barred to each other. House Bills 5441 and 5443 would place the corresponding sentencing guidelines in the Code of Criminal Procedure; House Bill 5441 is tie-barred to House Bill 5440 and House Bill 5443 is tie-barred to House Bills 5442 and 5444. House Bill 5444 would amend the penal code to prohibit behaviors that would impede a peace officer’s criminal investigation. Specifically, the bills would do the following:

Currently, it is a misdemeanor offense punishable by up to 2 years imprisonment, a fine up to \$1,000, or

House Bills 5440-5444 (1-31-02)

both to assault a peace or police officer, or to cause a bodily injury requiring medical care, while the officer is making a lawful arrest (and the person knew the individual to be a peace or police officer). House Bill 5440 would add Section 81d to the Michigan Penal Code (MCL 750.81d) to prohibit a person from assaulting or battering a peace officer who the person knew or had reason to know was acting in the performance of his or her duties. Penalties would be as follows:

- Assault or battery of a peace officer would be a felony punishable by imprisonment for up to two years or a fine of not more than \$1,000, or both.
- If the assault or battery inflicted bodily injury requiring medical attention or medical care, the offense would be a felony punishable by up to four years imprisonment, a fine of not more than \$5,000, or both.
- Inflicting serious injury would be felony punishable by up to 15 years in prison, a fine of not more than \$10,000, or both. (“Serious injury” is defined in Section 479a of the code.)
- Assault or battery that caused the death of a peace officer would be a felony punishable by imprisonment for up to 20 years or a fine of not more than \$20,000, or both.

An individual prosecuted under the bill could also be prosecuted for any other violation of law that was committed in conjunction with the assault or battery of a peace officer, and could be ordered to serve the term of imprisonment imposed under the bill consecutively to any other terms imposed. For the purposes of the bill, “peace officer” would be defined as:

- a police officer of this state or a political subdivision of this state, including, but not limited to, a motor carrier officer of the Department of State Police;
- a peace officer of a duly authorized police agency of the United States, including, but not limited to, an agent of the Secret Service or Department of Justice;
- a county sheriff or his or her deputy;
- a constable;
- a police officer of a junior college, college, or university who is authorized by the institution’s

governing board to enforce state law and the institution’s rules and ordinances; or

- a conservation officer of the Michigan Department of Natural Resources, the Department of Environmental Quality, or of the U.S. Department of Interior.

House Bill 5441 would amend the Code of Criminal Procedure (MCL 777.16d) to specify that assaulting or battering a peace officer would be a Class G felony against a person with a two-year maximum sentence of imprisonment, assaulting or battering a peace officer causing bodily injury requiring medical attention or medical care would be a Class F felony against a person with a four-year maximum term of imprisonment, assaulting or battering a peace officer causing serious injury would be a Class D felony against a person with a 15-year maximum sentence of imprisonment, and assaulting or battering a peace officer causing death would be a Class B felony against a person with a 20-year maximum term of imprisonment.

House Bill 5442 would also amend the Michigan Penal Code (MCL 750.479 and 750.479a). Currently, these two sections contain provisions relating to resisting and opposing certain law enforcement personnel and also for assaulting, beating, or wounding those persons. The provisions pertaining to assaults on these officers would be removed, since House Bill 5440 would establish penalties for those crimes. Instead, the bill would expand the provisions pertaining to resisting and opposing law enforcement officers to also include endangering the designated individuals and would apply this also to a judge, magistrate, probation officer, parole officer, prosecutor, city attorney, or court employee. The bill would replace the term “coroner” with “medical examiner”.

Further, the bill would prohibit a person from assaulting, beating, or wounding anyone described in the bill or any other individual authorized by law to maintain and preserve the peace, other than a peace officer, in his or her lawful acts, attempts, or efforts to maintain, preserve, and keep the peace. “Peace officer” would be defined as it is in House Bill 5440.

Currently, Section 479 of the code makes a violation of the prohibition a misdemeanor punishable by up to two years imprisonment and/or a fine of not more than \$1,000. If a violation of the bill’s provisions resulted in bodily injury requiring medical attention or medical care on a person described in the bill – less than serious injury - the penalty would be a

felony punishable by up to four years imprisonment, a fine of not more than \$5,000, or both. Inflicting serious injury would be a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$10,000, or both; and causing the death of a person described in the bill would be a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$15,000, or both. "Serious injury" is defined in Section 479a of the code.

A person could be charged under the bill's provisions in addition to being charged with, convicted of, and punished for any other violation of law committed while violating the bill.

House Bill 5443 would amend the Code of Criminal Procedure (MCL 777.16x) to place the maximum sentences for the felony offenses contained in House Bills 5442 and 5444 in the sentencing guidelines. The bill would specify that resisting or obstructing certain officers would be a Class G felony against a person with a maximum sentence of imprisonment of two years. Resisting or obstructing certain officers inflicting bodily injury requiring medical attention or medical care would be a Class G felony against a person with a maximum sentence of imprisonment of four years. Resisting or obstructing certain officers inflicting serious physical injury would be a Class D felony against a person with a maximum sentence of 10 years. Resisting or obstructing certain officers causing death would be a Class B felony against a person with a maximum sentence of 20 years.

The bill would also specify that to harbor, assist, or suppress evidence leading to discovery of an individual who committed or was sought for a crime would be a Class F felony against the public order with a four year maximum sentence of imprisonment. To harbor, assist, or suppress evidence leading to discovery of an individual who committed or was sought for a felony punishable by more than 10 years in prison would be a Class D felony against the public order with a maximum sentence of 10 years.

The bill would delete the provision that specifies that assaulting a peace officer is a Class H felony with a maximum sentence of imprisonment of two years. In addition, legislation over the past several years made many changes to penalties for various crimes. Not all of the changes were reflected in the sentencing guidelines. Therefore, the bill would also amend several of the guidelines to incorporate the descriptions of crimes pertaining to withholding or offering false evidence.

House Bill 5444. The Michigan Penal Code prohibits giving, offering, or promising anything of value to anyone in an effort to influence someone's statement or presentation of evidence to a police officer during a lawful investigation of a crime. The code also prohibits the use of threats or intimidation in an effort to influence someone's statement or presentation of evidence to a police officer during a lawful investigation of a crime. House Bill 5444 would amend the code (MCL 750.483a) to change the reference to "police officer" to "peace officer" and to prohibit a person from knowingly providing false or misleading information to a peace officer in the performance of his or her duties as a peace officer, knowing that the information was false or misleading. (A violation would be a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100, or both.) Currently, in either situation, the code provides an affirmative defense where the conduct was lawful and the defendant's sole intention was to encourage, induce, or cause the other person to provide a statement or evidence truthfully. The defendant has the burden of proving the existence of the defense by a preponderance of the evidence. The affirmative defense would extend to the new prohibition that would be added by the bill.

The bill would also prohibit a person who knew or had reason to know that an individual had committed a crime or was sought by peace officers from harboring or hiding the individual, providing assistance to the individual, or suppressing or destroying evidence that might have aided in discovering the individual's whereabouts with the intent to impede an investigation or prosecution. This provision would not apply to Chapter XXXII of the code, which pertains to jail or prison escapes or for conduct under which a person could be punished as if he or she had directly committed the offense committed by the individual as allowed under Section 39 of the Code of Criminal Procedure (MCL 767.39). The affirmative defense discussed above would be available to a defendant charged under this provision.

Impeding an investigation by harboring an individual or suppressing evidence would be a felony with a maximum sentence of imprisonment of four years or a fine of not more than \$10,000, or both. If the crime that the individual being sought had committed was a felony punishable for 10 years or more, the person impeding the investigation would be guilty of a felony punishable by up to 10 years imprisonment or a fine of not more than \$25,000, or both. The court could also require the person harboring the individual to reimburse any governmental agency for its

expenses incurred in discovering, apprehending, or prosecuting the individual as provided for in the Code of Criminal Procedure.

For the purposes of the bill, “peace officer” would be defined as:

- a police officer of this state or a political subdivision of this state, including, but not limited to, a motor carrier officer of the Department of State Police;
- a police officer of another state, a political subdivision of another state, or of any entity of the United States;
- a county sheriff of this state or a political subdivision of another state, or his or her deputy;
- a public safety officer of a community college, college, or university who is authorized by the institution’s governing board to enforce the law of this or any other state and the institution’s rules and ordinances; or
- a conservation officer of the Michigan Department of Natural Resources, of another state, or of the U.S. Department of Interior.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, depending on how the bills affected prosecutorial charging practices, numbers of convictions, and lengths of sentences, they could increase state or local correctional costs. Penal fine revenues could increase under the bills; such revenues are constitutionally dedicated to local libraries. (1-29-02)

ARGUMENTS:

For:

House Bill 5440 would increase the penalties for assaulting a police officer in the performance of his or her duties. Though current law does provide a penalty for assaulting an officer, it is minor in comparison to the some of the injuries inflicted by combatant detainees or arrestees, or by those who deliberately shoot or stab the officer. In fact, the maximum term of imprisonment for inflicting serious injury to a Family Independence Agency employee in the course of employment is over twice that for seriously injuring a police officer. Currently, regardless of the severity of injury, the maximum sentence for injuring an officer during a lawful arrest

is two years. The bill would establish a tiered penalty structure based on the level of injury to the officer. The bill would also specify that the sentence for assaulting an officer could be served after the offender served sentences for any other crimes arising from the same incident.

For:

House Bill 5442 would add penalties for assaulting and injuring certain persons who, though not police officers, serve court documents, enforce local ordinances, and are authorized to maintain and preserve the peace. Though not as frequently as peace officers, court employees such as probation and parole officers are vulnerable to assaults by persons going through the court system. Sheriffs and other process servers are often threatened or assaulted when serving subpoenas and other court documents. The bill would allow a court to give an additional sentence for the assault on these duly *authorized* individuals. Further, the bill would retain the resisting and obstruction provisions, but would expand the provision to apply to these other individuals designated in the bill and would also include actions that endanger these individuals.

For:

Current law prohibits the aiding and abetting of prison escapees, but it doesn’t provide penalties for those who harbor another who the person knows to have committed a crime or is being sought by the police. House Bill 5444 would prohibit conduct associated with hindering the apprehension of a person sought by police, and would provide appropriate penalties for interference with official investigations and prosecutions.

Response:

This provision could be applied to individuals suspected of concealing the whereabouts of a person wanted by police as a suspect in a crime involving acts of terrorism, as well as to an individual who is being reticent about giving up their beloved relative. There is concern about possible prosecutorial abuse in using these harsh penalties to coerce someone into revealing information that they don’t want to give. The bill may also put some individuals between a rock and a hard place, especially if they are being threatened or intimidated by a relative or acquaintance who is avoiding arrest.

Rebuttal:

The bill would not create a minimum sentence, and prosecutors always have an option as to whether to charge an individual or not. It would be reasonable to assume that a prosecutor would distinguish between a person who is willingly impeding an arrest

or prosecution and one who is being coerced. As to possible prosecutorial abuse, people refusing to cooperate with police investigations can already be charged with obstruction of justice. And, civil actions can be taken against prosecutors who misuse their authority. The bill just gives law enforcement officials another necessary tool in the war against crime and, now, against possible terrorist actions.

POSITIONS:

A representative of the Department of State Police indicated support for the House Bills 5440, 5442, and 5444. (1-29-02)

A representative of the Oakland County Prosecutor's Office indicated support for House Bills 5442 and 5444. (1-29-02)

A representative of the Police Officers Association of Michigan indicated support for House Bills 5440-5443.

Analyst: S. Stutzky

■ 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.