



**House
Legislative
Analysis
Section**

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**ASSAULTING OR OBSTRUCTING
OFFICERS OR OFFICIALS**

**House Bill 5440 as enrolled
Public Act 266 of 2002
Sponsor: Rep. Jennifer Faunce**

**House Bill 5441 as enrolled
Public Act 269 of 2002
Sponsor: Rep. Larry Julian**

**House Bill 5442 as enrolled
Public Act 270 of 2002
Sponsor: Rep. Jerry O. Kooiman**

**House Bill 5443 as enrolled
Public Act 271 of 2002
Sponsor: Rep. Raymond Basham**

**House Bill 5601 as enrolled
Public Act 272 of 2002
Sponsor: Rep. Mike Kowall**

**House Committee: Criminal Justice
Senate Committee: Judiciary**

Second Analysis (8-29-02)

House Bills 5440-5443 and 5601 (8-29-02)

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.

Further, a recent incident involving an Oakland County Sheriff's deputy revealed a discrepancy in current law regarding endangering police officers.

In the summer of 2001, Oakland County Sheriff's deputies responded to a call reporting a fire at a multi-unit inn. As one of the deputies was

evacuating residents from the burning building, he encountered a woman who was trying to ascend a stairway to an upper floor. The woman told the deputy that her baby was alone in a fourth floor room and attempted to squeeze past him. The deputy took her room keys and ordered her to evacuate the building. He then proceeded to the fourth floor, where, due to thick smoke, he had to crawl to the room. He searched the room, but found no baby. After the deputy reached safety, he discovered that the woman had reported a baby in her room as a ruse to retrieve her purse. The deputy, who was treated at the scene for smoke inhalation, later found that though the woman had endangered his life by lying about a baby in danger, she apparently had not violated any law.

Current law prohibits a person from obstructing or hindering a peace officer in the performance of his or her duties, but does not speak directly to certain actions that can place an officer at undue risk.

Specifically, the Michigan Supreme Court recently ruled that lying to a police officer does not in and of itself constitute “obstructing and resisting” a police officer. In *People v Vasquez* [465 MICH 83 (2001)], the majority opined that the “resisting and obstructing” statute “proscribes threatened, either expressly or impliedly, physical interference and actual physical interference with a police officer”; therefore, conduct such as lying “did not constitute threatened or actual physical interference.”

However, the penal code does prohibit a person from endangering a firefighter and makes a violation a four-year felony offense. Legislation has been offered to eliminate this discrepancy between firefighters and peace officers by making it illegal to endanger a law enforcement officer. In addition, some believe that endangering emergency medical service personnel (e.g., paramedics and emergency medical technicians) should also be criminalized. The legislation would include these first responders, as well.

In a related matter, many other professions connected to law enforcement, such as court personnel, probation and parole officers, city attorneys, and others are assaulted on occasion 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. It has also been recommended that the legislation include officers who enforce local ordinances and resolutions of a city board of trustees, a village council, or a township board.

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, firefighters, and emergency medical personnel and other governmental officers, respectively. House Bills 5441, 5443, and 5601 would place the corresponding sentencing guidelines in the Code of Criminal Procedure. House Bills 5440, 5443, and 5601 are tie-barred to House Bill 5442; House Bills 5441 and 5442 are tie-barred to House

Bill 5440. The bills would take effect July 15, 2002. Specifically, the bills would do the following:

House Bill 5440. Currently, it is a misdemeanor offense punishable by up to 2 years imprisonment, a fine up to \$1,000, or both to assault a peace or police officer (knowing the individual to be a peace or police officer), or to cause a bodily injury requiring medical care, while the officer is making a lawful arrest. However, knowingly and willfully hindering, obstructing, endangering, or interfering with a firefighter in the performance of his or her duties is a felony. Both of these provisions would be deleted by House Bill 5442 and replaced with a new section added by House Bill 5440.

The bill would add Section 81d to the Michigan Penal Code (MCL 750.81d) to prohibit an individual from assaulting, battering, wounding, resisting, obstructing, opposing, or endangering a “person” who the individual knew or had reason to know was performing his or her duties. Penalties would be as follows:

- If the action did not result in an injury to the person: a felony punishable by imprisonment for up to two years or a fine of not more than \$2,000, or both.
- If the action caused a bodily injury requiring medical attention or medical care: a felony punishable by imprisonment for not more than four years, a fine of not more than \$5,000, or both.
- If the action caused a serious impairment of a body function: a felony punishable by up to 15 years in prison, a fine of not more than \$10,000, or both. (“Serious impairment of a body function” is defined in Section 58c of the Michigan Vehicle Code, MCL 257.58c.)
- If the action caused the death of a person: 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, etc., 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, “person” 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 or capitol security 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;
- a conservation officer of the Michigan Department of Natural Resources, the Department of Environmental Quality, or of the U.S. Department of Interior;
- a firefighter; or
- any emergency medical service personnel described in Section 20950 of the Public Health Code, MCL 333.20950.

“Serious impairment of a body function” is defined in Section 58c of the Michigan Vehicle Code, MCL 257.58c, and “obstruct” would include the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.

House Bill 5441 would amend the Code of Criminal Procedure (MCL 777.16d) to specify that assaulting, resisting, or obstructing certain persons would be a Class G felony against a person with a two-year maximum sentence of imprisonment, assaulting, resisting, or obstructing certain persons causing injury would be a Class F felony against a person with a four-year maximum term of imprisonment; assaulting, resisting, or obstructing certain persons causing serious impairment would be a Class C felony against a person with a 15-year maximum sentence of imprisonment; and assaulting, resisting, or obstructing certain persons 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 750.241 et al). Currently, these sections contain provisions relating to resisting and opposing certain law enforcement personnel and municipal employees (coroner, township treasurer, and other officers authorized to serve court documents), and also for assaulting, beating, or wounding those persons. The provisions pertaining

to assaults on law enforcement officers would be removed, since House Bill 5440 would establish penalties for those crimes. Instead, the bill would amend the provisions pertaining to resisting and opposing municipal employees by eliminating the terms “resist” and “oppose” and making it a crime to “assault, batter, wound, obstruct, or endanger” a medical examiner, township treasurer, judge, magistrate, probation officer, parole officer, prosecutor, city attorney, or court employee, or court officer or person duly authorized to serve any process, rule, or order or who was otherwise acting in the performance of his or his duties. “Obstruct” would include the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.

Further, the bill would prohibit a person from assaulting, battering, wounding, or obstructing an officer who was enforcing an ordinance, law, rule, order, or resolution of a city, town, or village board or council.

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. The bill instead would make a violation a felony punishable by up to two years imprisonment and/or a fine of \$2,000. 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, the penalty would be a felony punishable by up to four years imprisonment, a fine of not more than \$5,000, or both. Causing a serious impairment of a body function 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 \$20,000, or both. “Serious impairment of a body function” is defined in Section 58c of the Michigan Vehicle Code, MCL 257.58c.

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. An offender could be ordered to serve a term of imprisonment for a violation of the bill consecutively to any other term of imprisonment imposed for a violation arising out of the same criminal transaction.

The bill would also increase the fines for fleeing and eluding a police or conservation officer; the maximum terms of imprisonment would remain the

same. The fine for fourth-degree fleeing and eluding would be increased from \$500 to \$2,000; third-degree fleeing and eluding would be increased from \$1,000 to \$5,000; second-degree fleeing and eluding would be increased from \$5,000 to \$10,000; and the fine for first-degree fleeing and eluding, which involves causing the death of another, would increase from \$10,000 to \$20,000.

Further, the bill would amend a section of the penal code created by the recently enacted anti-terrorism legislation. Currently, Section 543h specifies that a person is guilty of hindering prosecution of terrorism when he or she knowingly renders criminal assistance to a person who has committed an act of terrorism. A violation results in a felony offense punishable by imprisonment for life or any term of years or a fine or not more than \$100,000, or both. The bill would specify instead that hindering prosecution of terrorism is when a person knowingly renders criminal assistance to a person who has violated any section of the chapter entitled "The Michigan Anti-Terrorism Act" (other than Section 543h) or who is wanted as a material witness in connection with an act of terrorism under a provision of the Code of Criminal Procedure (MCL 767.39) that eliminates the distinction between a person who commits a crime and a person who is an accessory to a crime. The bill would also establish two levels of penalties. If the criminal assistance was rendered to a person who had violated Section 543f of the penal code, the offense would be a felony punishable by imprisonment for life or any term of years or a fine of not more than \$100,000, or both. Otherwise, hindering prosecution of terrorism would be a felony punishable by imprisonment for not more than 20 years, a fine of not more than \$20,000, or both. (Section 543f specifies that a person is guilty of terrorism when he or she knowingly and with premeditation commits an act of terrorism. A violation is a felony punishable by imprisonment for life or any term of years, a fine of not more than \$100,000, or both. If a death is caused by the terrorist act, the punishment is life imprisonment without parole.)

House Bill 5443 would amend the Code of Criminal Procedure (MCL 777.16x and 777.16z) to place the maximum sentences for the felony offenses contained in House Bill 5442 in the sentencing guidelines. The bill would specify that assaulting or obstructing certain officials would be a Class G felony against a person with a maximum sentence of imprisonment of two years. Assaulting or obstructing certain officials causing injury would be a Class G felony against a person with a maximum sentence of imprisonment of four years. Assaulting or obstructing certain officials

causing serious impairment would be a Class D felony against a person with a maximum sentence of 10 years. Assaulting or obstructing certain officials causing death would be a Class B felony against a person with a maximum sentence of 20 years.

The bill would also specify that hindering prosecution of terrorism – certain terrorist acts – would be a Class B felony against the public order with a maximum term of imprisonment of 20 years. Hindering prosecution of terrorism – act of terrorism – would be a Class A felony against the public order with a maximum term of imprisonment of life.

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 better incorporate the descriptions of those crimes. For the crime of interfering with a police investigation by committing a crime or threatening to kill or injure, the bill would change the offense from a Class D felony against a person to a Class D felony against a person.

House Bill 5601. The bill would amend the Code of Criminal Procedure (MCL 777.16n) to remove from the sentencing guidelines the offense of obstructing a firefighter, which is a Class F felony against the public safety with a statutory maximum sentence of four years' imprisonment. (House Bill 5442 would delete from the Michigan Penal Code the felony of hindering, obstructing, endangering, or interfering with a firefighter in the performance of his or her duties. However, House Bill 5440 would include firefighters in proposed penal code provisions that would prohibit and provide felony penalties for assaulting, battering, wounding, resisting, obstructing, opposing, or endangering certain people while in the performance of their duties. House Bill 5441 would include those proposed felonies in the sentencing guidelines.)

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, depending on how the bills affected prosecutorial charging practices, numbers of felony convictions, and lengths of sentences, they could increase state and local correctional costs. Penal fine revenues could increase under the bills; such revenues are constitutionally dedicated to local libraries. (8-29-02)

ARGUMENTS:**For:**

Though current law does provide a penalty for assaulting a police 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 an officer. In fact, the maximum term of imprisonment for inflicting serious injury to a Family Independence Agency employee in the course of his or her employment (Lisa's law) 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. And there is no penalty for endangering a police officer, though endangering a firefighter can result in a felony conviction and up to four years imprisonment. In addition, there is no enhanced penalty for an assault on a paramedic or emergency medical technician, although they also often must treat and transport aggressive, combative individuals or respond to potentially dangerous situations. House Bill 5440 would increase the penalties for assaulting, injuring, obstructing, and endangering police officers and would include firefighters and emergency medical personnel. It would provide uniformity of punishment for offenders and would consolidate all the provisions relating to attacks on law enforcement personnel, firefighters, and emergency medical personnel into one section of law (the provision making endangering a firefighter a four-year felony would be eliminated by House Bill 5442).

Similarly, persons who are authorized to serve court documents, such as subpoenas, along with court employees, probation and parole officers, judges, city or township officers, medical examiners, and prosecutors also come into contact with dangerous and/or angry people in the course of performing their duties. House Bill 5442 would add penalties for assaulting, injuring, obstructing, or endangering certain persons who, though not police officers, serve court documents or enforce local ordinances. 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. In settings where emotions run high, it is not uncommon for process servers to be attacked, for probation or parole officers to be assaulted, for court personnel to be threatened or attacked, or for shootings to occur in courtrooms and courthouses. As one assistant prosecutor noted, "[t]he nature of our job is conflict."

The bills would establish tiered penalty structures based on the level of injury to the individual. The bills would also specify that a sentence for a violation of either bill could be served after the offender served sentences for any other crimes arising from the same incident. Hopefully, tougher penalties will act as a deterrent for those considering endangering or attacking any of the designated persons, and will act as appropriate punishment for those who do carry out attacks on those trying to work for the public good.

Response:

House Bill 5442 would apply these enhanced penalties for inflicting serious injury to or causing the death of a wide range of governmental and court employees or even contract employees such as process servers; in essence, it would extend to these workers the same treatment currently provided to peace officers. Where it does make sense to create enhanced penalties to increase protection to individuals such as police officers and emergency response personnel – those who face dangerous situations or place their lives on the line to save others on a regular basis – it can be argued that current laws regarding assault, assault and battery, reckless endangerment, and manslaughter and murder are sufficient to address these other situations. It would seem that by enhancing the penalties for assaulting certain categories of individuals, that the law is in effect saying that an attack on those individuals is more heinous than an attack on, say, someone's grandmother. Shouldn't the existing sanctions against violent behaviors be uniformly applied and enforced so that a message is not inadvertently sent that some people are more important than others?

Rebuttal:

A historical precedence for setting enhanced penalties for crimes against certain individuals has long been established in law. Far from deeming some categories of people more important than others, the laws instead recognize that some professions are inherently more dangerous than other professions. Regarding the inclusion of court personnel and other governmental workers, though these designated persons are not peace officers, they are still an integral part of the process to maintain and preserve peace and order. Performance of their job duties also upholds and enforces the legal system, and also places these individuals in situations conducive to acts of violence or endangerment. They should not have to face additional danger from a person who may be seeking revenge (e.g., a judge or

prosecutor who sent someone to prison or a parole officer who sent someone back to prison for a parole violation), or acting out in anger. Nor should these people be hindered in the performance of their duties. They deserve to work in a safe environment, and so deserve the deterrent effects that this legislation could provide.

For:

House Bill 5442 would increase the penal fines for fleeing and eluding a police officer. Apparently, though penal fines for many other types of criminal activity, such as larceny, have been increased in recent years, the fines for fleeing and eluding a police officer have remained unchanged for many years. When a person tries to outrun a police vehicle, he or she puts not only themselves and the police officer in danger, but also endangers people in other vehicles and pedestrians who are in the way. High-speed police chases sometimes end tragically when the individual who is fleeing runs a red light or loses control of the car and strikes a person or other vehicle. It is only fitting that the fines be raised to reflect the seriousness of this type of action.

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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.