



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 344 (as enrolled)
Sponsor: Senator Wayne Kuipers
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 6-11-07

RATIONALE

Public Act 655 of 2006 made a number of amendments to the Code of Criminal Procedure, including Chapter 17, which contains the sentencing guidelines. The Act inadvertently changed the sentencing guidelines MCL citation for receiving or concealing stolen property having a value of \$20,000 or more or with prior convictions. It has been suggested that the error be corrected and that the revision be applied retroactively to the effective date of Public Act 655.

In addition, Section 16z of Chapter 17 includes guidelines classifications for 31 violations of the Michigan Penal Code involving stolen property, terrorism, and eavesdropping. That section has been expanded over the years, as new offenses related to those activities have been added to the Penal Code. To avoid confusion and the need to amend that section repeatedly, some people believe that the sentencing guidelines classifications in Section 16z should be divided among three different sections of Chapter 17.

Public Act 655 also amended the Code to refer to "interactive video technology" rather than "closed circuit television" in provisions allowing a court to conduct certain proceedings by audio and video communications. It has been suggested that the Code also should refer to interactive video technology in its definition of "taken", "brought", or "before" a judge or district court magistrate for arraignment or bail.

CONTENT

The bill would amend the Code of Criminal Procedure to do the following:

- **Correct the MCL citation in the sentencing guidelines classification for receiving or concealing stolen property having a value of \$20,000 or more or with prior convictions.**
- **Recodify some of the sentencing guidelines designations for various violations of the Michigan Penal Code.**
- **Replace a reference to "closed circuit television" with "interactive video technology".**

Chapter 17 (Sentencing Guidelines)

Currently, the Michigan Compiled Laws (MCL) citation for receiving or concealing stolen property having a value of \$20,000 or more or with prior convictions is listed in the sentencing guidelines as 750.520b(2), but the actual citation for that violation is 750.535(2). The bill would change the guidelines citation to MCL 750.535(2).

The bill specifies that this citation correction would apply retroactively to January 9, 2007 (which is the effective date of Public Act 655 of 2006).

In addition, MCL 777.16z includes sentencing guidelines classifications for 31 violations of the Penal Code. The bill would delete 25 of those classifications and recodify them in two proposed sections (MCL 777.16aa and 777.16bb). (The offenses recodified in MCL 777.16aa deal with

eavesdropping, surveillance, and telecommunications. The offenses recodified in MCL 777.16bb pertain to terrorism. The offenses remaining in MCL 777.16z involve stolen property.)

Chapter 1 (Definitions)

Under Chapter 1, "taken", "brought", or "before" a magistrate or judge for purposes of criminal arraignment or the setting of bail means either of the following:

- Physical presence before a judge or district court magistrate.
- Presence before a judge or district court magistrate by use of two-way closed circuit television.

The bill would refer to two-way interactive video technology instead of two-way closed circuit television.

MCL 761.1 et al.

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 bill would correct what appears to be a typographical error made when Public Act 655 of 2006 changed the MCL citation in the sentencing guidelines classification for receiving or concealing stolen property worth at least \$20,000 or with prior convictions. Although a compiler's note after the MCL section that contains the error points it out and indicates the correct citation, the statute itself should be accurate. According to testimony before the Senate Judiciary Committee by a representative of the State Court Administrative Office, the MCL citation in the sentencing guidelines determines whether an offense is included in the guidelines. If the proper MCL citation for an offense is not listed, a person convicted of the offense could argue that the guidelines' scoring system does not apply to his or her sentence.

Supporting Argument

Section 16z of the sentencing guidelines covers a wide variety of violations. As offenses relating to terrorism and unlawful eavesdropping and surveillance have been

added to the Penal Code, Section 16z has been expanded. Large sentencing guidelines sections can be a problem because the appropriate section in Chapter 17 must be amended whenever a criminal penalty is enacted or amended. If there are multiple proposals to amend a sentencing guidelines section, it can become confusing as the bills proceed through the Legislature. In 2002, in an effort to reduce confusion and the need for conflict substitutes resulting from numerous amendments to large sentencing guidelines sections, the Legislature reduced the size of several sections in Chapter 17 by recodifying sentencing guidelines classifications into more sections. By moving many of the violations currently listed in Section 16z to two new sections, the bill would address the same issue as the 2002 sentencing guidelines reorganization.

Supporting Argument

Public Act 655 changed "closed circuit television" to "interactive video technology" in provisions of the Code allowing a judge or district court magistrate to conduct initial criminal arraignments and set bail by two-way audio and video communication. The Code, however, still refers to closed circuit television in its definition of being "brought", "taken", or "before" a judge or magistrate. The bill would bring the definition into conformity with the language adopted by Public Act 655 for the practice of audio-video arraignments and the setting of bail.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Lindsay Hollander

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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.