

Legislative Analysis



1ST DEGREE MURDER: INCLUDE DISCHARGING FIREARM AT DWELLING

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House Bill 5145 (reported without amendment)
Sponsor: Rep. Thomas F. Stallworth, III
Committee: Judiciary

First Analysis (5-15-12)

BRIEF SUMMARY: The bill would make intentionally shooting a firearm at a dwelling or occupied structure that resulted in death first degree murder.

FISCAL IMPACT: The bill may increase state and local correctional costs as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

In January of this year, 12-year-old Kadejah Davis of Detroit was killed when a gunman fired through the family's front door. A few weeks later a 9-month old boy was killed in Detroit when someone fired between 20 and 30 shots into the house he was in. These are just two of the senseless murders committed in the state by people shooting firearms at houses.

Whether shots are fired at a home in retaliation after an argument, or related to drug or gang activities, it is often an innocent bystander who pays the ultimate price. In some communities where drive-by shootings are rampant, residents live with a debilitating fear. Even lying in bed is not safe when bullets from high-powered weapons can pierce walls and travel through several rooms.

Currently, the maximum prison sentence for shooting a gun at a house or other occupied structure is four years. Some would argue this is an inadequate punishment, especially when a person is killed. Proponents of increasing the penalty say a more appropriate punishment, if someone is killed, would be to elevate the crime to first degree murder which carries a life sentence without parole.

First degree murder requires the intentional killing of a human being with premeditation and deliberation. However, certain crimes deemed to be inherently heinous such as carjacking, arson, rape, and kidnapping are elevated to first degree murder if a death occurs, even absent intent. For example, a person who sets fire to an abandoned house may be charged with, and convicted of, first degree murder if a squatter living inside the structure is killed, even if the arsonist didn't know a person was inside and never intended to harm anyone.

Proponents of the change say that intentionally firing a gun at a house or garage where people are likely to be inside carries a high risk of injury or death to the occupants, and

therefore should be punished similarly to those other types of crimes that can end in death.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code (MCL 750.316). Under the bill, murder committed in the perpetration of intentionally discharging a firearm at a dwelling or an occupied structure under Section 234b would be included in the list of acts that constitute first degree murder. First degree murder carries a mandatory sentence of life imprisonment without parole.

[Section 234b of the penal code makes it a felony, punishable by imprisonment for not more than four years and/or a fine of not more than \$2,000, to intentionally discharge a firearm at a facility that a person knows or has reason to believe is a dwelling or an occupied structure.]

FISCAL INFORMATION:

The bill would provide that a person who commits a murder by intentionally discharging a firearm at a dwelling or an occupied structure is guilty of first-degree murder, which carries a mandatory sentence of life imprisonment in a state correctional facility. Under current law, this offense would fall under the definition of second-degree murder unless it met other separate criteria for the first-degree offense.

No information is available to determine how many new first-degree murder convictions would result from the new provisions of the bill. As background, for calendar year 2009 (the year for which published data is available), the average minimum sentence for a person convicted of second-degree murder was 22.8 years. As stated above, first-degree murder carries a mandatory life prison sentence. To the extent that the bill results in new first-degree murder convictions that would not otherwise have occurred, it would increase the duration of state minimum prison sentences for those convicted, and thus likely increase future state correctional costs. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs.

ARGUMENTS:

For:

Gun violence continues to be a problem in certain areas of the state, with some feeling that an entire generation is being lost to death or a lifetime of incarceration. Drive-by shootings are often associated with drug or gang involvement. A house may be shot up as a warning or in retaliation for a perceived wrong. Or shots may be fired in the direction of a house intending to shoot someone standing in front of it. However, even with locked doors and windows, a person may not be safe at home. More and more often it seems as if it is a child sleeping in her bed, or a grandmother watching TV in her living room who is killed when bullets penetrate a door, window, or the outside walls of a

house. Since bullets from high powered weapons can travel through furniture and inside walls, even people located in back rooms have been killed. Often these are not the intended victims.

Regardless of the whys and wherefores, innocent people are being killed. There is such an inherent dangerousness in shooting into a house or garage, or other occupied structure, it follows that someone is likely to be seriously injured or killed, even if that is not the intended outcome. Shooting in the direction of a dwelling simply cannot be tolerated.

Increasing the penalty to first degree murder would get dangerous people off the streets, discourage future incidents, and allow residents to feel safe within their own walls.

Against:

It is a tragedy whenever an innocent person is injured or killed by gun violence. However, increasing the number of crimes for which the only penalty is life without parole is not the answer. First, such penalties rarely have the deterrent effect touted by proponents. Secondly, this removes discretion from judges who may feel that extenuating circumstances, the age of the offender, or the role of the offender do not justify life behind bars. People have been successfully rehabilitated and gone on to live model lives after being convicted of killing a person. But mandatory sentences work against rehabilitation and drive up costs to taxpayers. If a person is truly dangerous, society does need to be protected from that person. If a person takes the life of another, he or she should pay a price for that act. But this could capture individuals that didn't know a person they were with had a gun, or that the person would fire at or into a house. It would capture individuals who because of substance abuse made bad decisions, but who show promise of being rehabilitated and returned to society after an appropriate sentence. Simply put, just increasing the penalty that can be meted out for this type of crime will not ensure safety for citizens nor will it guarantee reductions in drive by shootings. Only a systemic approach addressing the culture that nurtures this type of behavior could do that.

POSITIONS:

A representative of the Wayne County Prosecutor's Office testified in support of the bill.
(4-26-12)

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