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BILL ANALYSIS

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Senate Bill 845 (Substitute S-2 as reported)  
Senate Bill 846 (Substitute S-2 as reported)  
Senate Bill 847 (Substitute S-2 as reported)  
Sponsor: Senator Rick Jones (S.B. 845)  
          Senator Tory Rocca (S.B. 846)  
          Senator Tonya Schuitmaker (S.B. 847)  
Committee: Judiciary

### **CONTENT**

Senate Bill 847 (S-2) would amend the Michigan Penal Code to increase the felony penalties for domestic assault and aggravated domestic assault when an individual who commits either offense has previous convictions for domestic assault.

Currently, , if an individual commits domestic assault (i.e., assaults or assaults and batters his or her spouse or former spouse, an individual with whom he or she has or has had a dating relationship, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household), and has two or more previous convictions for domestic assault, he or she is guilty of a felony punishable by up to two years' imprisonment, a maximum fine of \$2,500, or both. The same penalty applies for aggravated domestic assault when the individual has one or more previous convictions for domestic assault.

The bill would increase both penalties to a maximum of five years' imprisonment and/or a maximum fine of \$5,000.

Senate Bill 846 (S-2) would amend the Code of Criminal Procedure to revise the sentencing guidelines for domestic assault and aggravated domestic assault with prior convictions, to reflect the increased penalties proposed by Senate Bill 847 (S-2), and to include a felony penalty proposed by Senate Bill 848 (S-2).

Currently, domestic assault with prior convictions and aggravated domestic assault with prior convictions both are Class G felonies against a person, with a statutory maximum penalty of two years' imprisonment. Under the bill, both violations would be Class E felonies against a person, with a statutory maximum penalty of five years' imprisonment.

In addition, assault by strangulation or suffocation would be a Class D felony against a person with a statutory maximum penalty of 10 years' imprisonment, as proposed by Senate Bill 848 (S-2).

Senate Bill 845 (S-2) would amend the Code of Criminal Procedure to specify that a deferral and dismissal of a domestic violence assault conviction would constitute a prior conviction in a prosecution for domestic assault or aggravated domestic assault with one or more prior convictions.

Under the Code, when an individual who has not been convicted previously of an assaultive crime pleads guilty to, or is found guilty of, domestic assault or aggravated domestic assault, the court may defer further proceedings and place the accused on probation without entering a judgment of guilt.

When the terms and conditions of the deferral and probation are fulfilled, the court must discharge the person and dismiss the proceedings against him or her. Discharge and dismissal must be without adjudication of guilt and are not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

Under the bill, however, a deferral and dismissal under these provisions would constitute a prior conviction in a prosecution for domestic assault under Sections 81(3) or 81(4), and aggravated domestic assault under Section 81a(3) of the Michigan Penal Code. (Section 81(3) prescribes the penalty for a person who is convicted of domestic assault and has a prior domestic assault conviction; Section 81(4) prescribes the penalty for a person who is convicted of domestic assault and has two or more prior domestic assault convictions; and Section 81a(3) prescribes the penalty for a person who is convicted of aggravated domestic assault and has one or more prior domestic assault convictions.)

All of the bills would take effect on July 1, 2012. Senate Bill 846 (S-2) is tie-barred to Senate Bill 847.

MCL 769.4a (S.B. 845)  
777.16d (S.B. 846)  
750.81 & 75.81a (S.B. 847)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. By lengthening the maximum sentence for repeat domestic assault offenders, the bills could increase the average length of stay in State facilities and thereby increase incarceration costs. The average annual cost of incarceration in a State facility is approximately \$34,000. The increased maximum penal fine could generate additional revenue for public libraries.

Date Completed: 1-18-12

Fiscal Analyst: Dan O'Connor

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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.