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BILL



ANALYSIS

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Senate Bill 33 (Substitute S-1 as reported)
Sponsor: Senator Ken Horn
Committee: Judiciary

Date Completed: 9-21-17

RATIONALE

The Michigan Penal Code makes it a felony to assault, batter, injure, resist, or endanger a law enforcement officer, firefighter, or emergency medical service worker. Some people believe that this offense should be extended to such actions against emergency room (ER) personnel in a hospital. A number of sources indicate that health care personnel are at a high risk of workplace violence. In December 2016, the Occupational Health and Safety Administration (OSHA) issued a Request for Information for a proposed rule on the prevention of violence in health care and social assistance. In its summary, OSHA stated, "Workplace violence against employees providing health care and social assistance services is a serious concern. Evidence indicates that the rate of workplace violence in the industry is substantially higher than private industry as a whole." According to 2014 U.S. Bureau of Labor Statistics (BLS) data, cited by OSHA, workers in the health care and social assistance sector experienced violence-related injuries in the workplace at a rate more than four times higher than the rate for workers in the private sector overall. In one survey by the American Nurses Association, also cited by OSHA, 21% of registered nurses and nursing students reported being physically assaulted in a 12-month period. According to the American College of Emergency Physicians, more than 75% of emergency physicians experienced at least one violent workplace incident in a year. Although patients are the largest source of violence in health care settings, injuries to employees also are inflicted by visitors, co-workers, and others.

Emergency department personnel, in particular, are considered to be on the "front line" of workplace violence. These individuals commonly treat patients who are intoxicated or under the influence of drugs, or who may be victims of gang violence. In some cases, people go to emergency rooms seeking drugs. Emergency department workers also interact with distraught relatives who might act irrationally. To protect ER personnel, it has been suggested that the penalties for assaulting, wounding, or endangering law enforcement officers also should apply to the same actions taken against these hospital employees.

CONTENT

The bill would amend the Michigan Penal Code to extend to emergency room personnel a prohibition against assaulting, battering, wounding, resisting, or endangering law enforcement or other emergency personnel. The bill also would require an employer of any of these personnel to post a sign regarding the offense.

The Code prescribes felony penalties for an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person whom the individual knows or has reason to know is performing his or her duties. "Person" means any of the following:

- A police officer of this State or of a political subdivision of this State, including a motor carrier officer or Capitol security officer of the Department of State Police.
- A police officer of a junior college, college, or university who is authorized to enforce State law and the rules and ordinances of that institution.

- A Department of Natural Resources or Department of Environmental Quality conservation officer.
- A U.S. Department of the Interior conservation officer.
- A sheriff or deputy sheriff.
- A constable.
- A peace officer of a duly authorized police agency of the United States, including an agent of the Secret Service or Department of Justice.
- A firefighter.
- Emergency medical service personnel.
- An individual engaged in a search and rescue operation.

The bill would include in the definition of "person" emergency room personnel, including physicians, nurses, intake clerks, and any other individuals employed in the emergency department, emergency room, operating room, or trauma center of a hospital licensed under Article 17 (Facilities and Agencies) of the Public Health Code.

An employer of any of the people listed in the definition would be required to post a sign at any property used by the employer stating that it is a felony to assault a such a person whom an individual has reason to know is performing his or her duties.

(The offense is punishable by imprisonment for up to two years or a maximum fine of \$2,000, or both. If the violation causes bodily injury requiring medical attention or medical care to the victim, the penalty is up to four years' imprisonment or a \$5,000 maximum fine, or both. If the violation causes a serious impairment of a body function of the victim, the maximum penalty is 15 years and/or \$10,000. If the violation causes the death of the victim, the maximum penalty is 20 years and/or \$20,000.)

The bill would take effect 90 days after its enactment.

MCL 750.81d

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

Workplace violence is a serious occupational risk to hospital personnel, especially those in emergency rooms. Unlike other employment settings, nearly all hospitals are subject to a Federal law that requires emergency rooms to screen anyone who arrives at the ER and to stabilize or treat the person if he or she has an emergency medical condition. This means that an ER cannot turn away someone who is belligerent, threatening, or violent, whether due to intoxication, drugs, an injury, a medical condition, or a psychiatric problem. In addition, an ER patient might be accompanied by a relative who becomes aggressive as a result of stress or fright, or a fellow gang member. Emergency department personnel have direct contact with these individuals, and can be injured or threatened if they are combative. Health care workers report being punched, kicked, shoved, choked, and spat at, as well as verbally abused. In some cases, medical personnel have been stabbed and shot. Violence in the ER also creates a dangerous environment for other patients and visitors, compounding stress and anxiety, and potentially triggering more aggression.

In addition to the physical injury that ER personnel experience, abuse can have a number of less direct or visible consequences. Workers may suffer psychological trauma, chronic pain, ongoing disability, cognitive impairments, and nightmares. According to OSHA, studies have found that emergency department workers have post-traumatic stress disorder or its symptoms at rates between 12% and 20%, while the average rate for the general U.S. adult population is about 3.5%. These conditions can lead to absenteeism and high job turnover. Even if an employee does not miss work or quit, workplace abuse can cause withdrawal from patients, reduced productivity,

and low morale. Violence and abuse also result in costs for employers, which bear the expense of overtime, temporary staffing, or recruiting and training replacements, as well as worker's compensation insurance. These costs eventually may be passed on to patients and taxpayers, who also will be affected by a shortage of health care workers when practitioners leave the medical profession and others are discouraged from entering it.

By extending felony penalties to a person who assaults, batters, wounds, resists, or engenders an individual in a hospital's ER, emergency department, operating room, or trauma center, knowing that the individual was performing his or her duties, the bill would help protect these personnel. The penalties currently apply to actions against other categories of workers who come into contact with potentially dangerous and violent people on the job, including law enforcement officers, conservation officers, and emergency medical service workers. Emergency room personnel are subject to the same risks and deserve the same protection.

Also, the bill would help deter violence against the protected employees by requiring their employers to post a sign informing the public that the offense is a felony. If someone is feeling combative due to stressful circumstances in a hospital or police department, it is possible that seeing such a sign could cause the person to think twice and exercise some self-control.

Response: Although it is clear that ER personnel face potentially dangerous situations in their employment, it is not clear why the protections of the law should not be extended to other employees. Workers throughout a hospital might encounter a threatening patient or visitor, and workers in other health care settings face a high degree of risk. According to BLS statistics reported by OSHA, the incident rate for violence and other injuries in the United States in 2014, per 10,000 full-time private sector workers, was 1.7 for all industries, 8.9 in hospitals, and 18.7 in nursing and residential care facilities. The statistics also show that the severity of workplace injury is even greater in state government entities, where the rate of violence and other injuries per 10,000 workers was 97.4 in hospitals and 116.8 in nursing and residential care facilities. Considering the data by occupation, rather than workplace, the BLS statistics showed that, across all private industries, psychiatric aides experienced the highest rates of intentional injury. As these data demonstrate, hospital ER personnel are not the only health care workers likely to be injured, nor are they at the greatest risk.

Supporting Argument

The bill would send a message that emergency room personnel are valued and deserve protection. According to testimony before the Senate Judiciary Committee, many assaults on ER workers are reported to law enforcement but are not taken seriously, even when a repeat offender is involved. In other cases, the victims do not bother to report because law enforcement has not responded in the past. Some people seem to believe that health care workers should be expected to deal with violence as part of their job. Allowing individuals to be placed in harm's way, however, is not tolerated in other workplaces or segments of society. If someone were assaulted in a retail environment, for example, the offender probably would be detained by security personnel and taken away by the police. If ER personnel are required by law to assess and treat all patients, regardless of their abusive behavior, they should be protected.

In addition, if it were a felony to assault an ER worker, perhaps the offense would be taken more seriously. Under current law, a "simple" assault or assault and battery is a misdemeanor punishable by imprisonment for up to 93 days and a \$500 maximum fine. An unarmed assault that inflicts serious or aggravated injury also is a misdemeanor, with a maximum term of one year's incarceration and a fine of up to \$1,000. The felony penalties also would more adequately punish offenders who attack the people providing care for them.

Opposing Argument

The section of the Penal Code that makes it a felony to assault a law enforcement officer, firefighter, or emergency medical service worker also makes it a felony to resist, obstruct, or oppose such personnel, even if there is no physical contact or injury. While this might be appropriate in the case of someone resisting a police officer, making it a crime to resist an ER

worker could be excessive. In an emergency department, a person resisting a nurse or physician might simply be refusing medical treatment.

Response: Apparently, there have been no complaints about someone resisting an emergency medical technician or paramedic by refusing treatment.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill could have a negative fiscal impact on the State and local government. More felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Fiscal Analyst: Ryan Bergan

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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.