

DRIVE-BY SHOOTINGS: INCREASE PENALTIES

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 582 (reported from House committee without amendment)

Sponsor: Sen. James Marleau

Senate Bill 583 (reported from House committee without amendment)

Sponsor: Sen. Jim Ananich

House Committee: Criminal Justice

Senate Committee: Judiciary

First Analysis (4-15-14)

BRIEF SUMMARY: Senate Bill 582 would increase penalties for drive-by shootings, increase penalties for firing a weapon at or in a building, and create enhanced penalties for violations that cause injury to a victim. Senate Bill 583 would place the maximum term of imprisonment for these crimes in the corresponding section of the sentencing guidelines. Both bills would take effect 90 days after enactment.

FISCAL IMPACT: In 2012, there were 24 sentences imposed for discharging a firearm from a vehicle and 76 sentences imposed for discharging a firearm at an occupied structure. To the extent that the bills increase the number of offenders sent to prison or increase the lengths of prison sentences, the bills could increase costs on the state's correctional system. The average cost of prison incarceration in a state facility is roughly \$35,600 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,600 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

"Five Injured, Including An 8-Year-Old in Drive-By Shooting," "2 Men, Toddler Injured in Drive-By Shooting," "12-Year-Old Detroit Boy Killed in Drive-By Shooting." These were just three headlines posted online by CBS Detroit in a one-month period last summer and that serve to underscore the ongoing problem with drive-by shootings—incidents in which an assailant fires a weapon from a moving or stationary vehicle. Because drive-by shootings generally involve the use of an automatic or semi-automatic weapon, many bullets are fired over a broad target area. As a result, a drive-by is more likely to injure or kill innocent bystanders along with, or instead of, the specific person the shooters are targeting. All too often, children at play in their yards or even sleeping in their beds are the victims.

Though it is a felony to fire a gun from a vehicle, and also at a house or business whether in a vehicle or on foot, some feel that the current penalty of up to four years in prison and/or a fine of not more than \$2,000 is insufficient to deter this type of violence. In addition, it is believed that a better approach should be to tie the severity of the penalty to the level of injuries incurred by the victims of such shootings.

THE CONTENT OF THE BILLS:

Senate Bill 582

The bill would amend the Michigan Penal Code (MCL 750.234a and 450.234b) to do the following:

Shooting from a vehicle

Currently, it is illegal to intentionally discharge a firearm from a motor vehicle, a snowmobile, or an off-road vehicle in such a manner as to endanger the public safety. A violation is a felony punishable by imprisonment for not more than four years or a fine of not more than \$2,000, or both.

The bill would increase the penalty for a violation as follows:

- ❖ Endangers the safety of another – imprisonment for not more than 10 years and/or a fine of not more than \$10,000.
- ❖ Causes any physical injury to another – imprisonment for not more than 15 years and/or a fine of not more than \$15,000.
- ❖ Causes the serious impairment of a body function of another – imprisonment not more than 20 years imprisonment and/or a fine of not more than \$25,000.
- ❖ Causing the death of another – imprisonment for life or any term of years.

Intentionally shooting at or in a building

It is against the law to (1) intentionally discharge a firearm *at* a facility that the shooter knows or has reason to believe is a dwelling or an occupied structure; or, (2) to intentionally discharge a firearm *in* a facility that the shooter knows or has reason to believe is an occupied structure in reckless disregard for the safety of any individual.

The bill would clarify that these provisions apply to a potentially occupied structure *and whether or not the dwelling or structure was actually occupied at the time the firearm was discharged*. The current penalty of a maximum term of imprisonment of four years and/or a fine of not more than \$2,000 would be increased to a maximum term of imprisonment of 10 years and/or a fine of not more than \$10,000.

A violation that causes injury to or the death of another person would result in enhanced felony penalties as follows:

- ❖ Any physical injury to another – maximum term of imprisonment of 15 years and/or a fine of not more than \$15,000.

- ❖ Serious impairment of a body function – maximum term of imprisonment of 20 years and/or a fine of not more than \$25,000.
- ❖ Causing death – imprisonment for life or any term of years.

The bill would also specify that Sections 234a (shooting from a vehicle) and 234b (shooting at or in a building) would not prohibit an individual from being charged with, convicted of, or punished for any other violation of law committed by that individual while violating these provisions. A court could order a term of imprisonment imposed for a violation of Section 234a or 234b to be served consecutively with any other sentence imposed for another violation arising from the same transaction. As with current law, these provisions would not apply to a peace officer in the performance of his or her duties or to an individual discharging a firearm in self-defense or the defense of another person.

Definitions

The definition of "occupied structure" (a facility in which one or more individuals are present) would be deleted and replaced with the term "potentially occupied structure" defined to mean a structure that a reasonable person knows or should know is likely to be occupied by one or more individuals due to its nature, function, or location.

"Serious impairment of a body function" would mean that term as defined in Section 58c of the Michigan Vehicle Code (MCL 257.58c).

Senate Bill 583

The bill, which is tie-barred to Senate Bill 582, would amend the Code of Criminal Procedure (MCL 777.16m) to revise the sentencing guidelines. The bill would increase from 4 years to 10 the maximum term of imprisonment allowed for discharging a firearm from a vehicle or discharging a firearm at a dwelling or potentially occupied structure, and change the category of the crimes from a Class F felony to a Class D felony. The bill would also add the following sentencing guidelines:

- Discharging a firearm in a dwelling or potentially occupied structure would be a Class D felony against the public safety with a maximum term of imprisonment of 10 years.
- Discharging a firearm from a vehicle or in or at a dwelling or potentially occupied structure causing physical injury would be a Class C felony against a person with a maximum term of imprisonment of 15 years.
- Discharging a firearm from a vehicle or in or at a dwelling or potentially occupied structure causing serious impairment would be a Class B felony against a person with a maximum term of imprisonment of 20 years.
- Discharging a firearm from a vehicle or at or in a dwelling or potentially occupied structure causing death would be a Class A felony against a person with a maximum term of imprisonment of life.

HOUSE COMMITTEE ACTION:

The bills were not amended by the House committee.

BACKGROUND INFORMATION:

The bills are nearly identical to House Bills 4167 and 4168 of the 2007-2008 Legislative session. The bills were passed by the House but did not see action in the Senate.

ARGUMENTS:

For:

The bills address the rising death and injury toll resulting from drive-by shootings, but do much more. The bills also raise the penalties for shooting at or in a dwelling or business, whether or not the building was occupied at the time the gun was fired, and whether or not the shots were fired from a vehicle or on foot. Those in law enforcement say the changes are needed for preventing violence and to more appropriately punish conduct that is inherently dangerous to the public regardless of the perpetrator's "intent."

All too often, the intended victim of a drive-by shooting escapes injury while innocent bystanders are killed or injured. People are killed or injured when sitting on their porches, walking their dogs, crossing the street. Bullets have penetrated walls and windows and killed children and adults inside their homes, even while in bed asleep. Entire neighborhoods are impacted when residents are afraid to let children play in the yard or have a glass of lemonade on the porch on a hot day. Businesses cannot thrive if customers stay away out of fear of being shot in or near the establishment.

Under Senate Bill 582, intent to harm the victim or victims would not have to be proved; intentionally discharging a firearm from a vehicle, or in or at a dwelling or occupied structure, would be sufficient to trigger the bill's penalties. If any person suffered injuries or death (even if not the intended victim), the penalties would be increased accordingly. Moreover, if a perpetrator was convicted of other crimes arising from the same incident, the bill would allow a judge to order the sentence imposed under the bill to be served before or after the sentences imposed for the other crimes (consecutive sentencing). Since most multiple sentences are served concurrently (at the same time), this means that an offender would be off the streets longer.

The bills would give prosecutors an additional tool in keeping the residents of the state safe, would be more effective in deterring drive-by shootings and shootings directed at homes/businesses than the current penalties, and would keep dangerous individuals incarcerated and off the streets longer.

Response:

There has been a trend in recent years to increase the maximum terms of imprisonment for many crimes. In addition, a state supreme court case a few years ago interpreted statutory language to mean that multiple convictions arising from the same incident could be counted as separate events at sentencing, thus triggering enhanced penalties for the

second and subsequent violations (i.e., a person convicted of three violations from the same incident could—instead of having each violation be sentenced as a first offense—have one sentenced as a first offense, one as a second offense, and one as a third offense).

Some feel these approaches add to the problem of prison overcrowding and to the problem of the high costs of the state's correctional system. And what about hunters whose bullets inadvertently go astray and towards a dwelling? Moreover, because the bill allows, but not requires, a sentence to be served consecutively to any other sentences arising from the same event, treatment of defendants could differ around the state depending on how a prosecutor charged the crime and the philosophy of the presiding judge.

Rebuttal:

Senate Bill 582 would not apply to accidents. If the conduct of a hunter does not fit the elements under the bill or of any crime, charges are unlikely to be brought. The crimes addressed by the bill already exist in law and there is case law shaping the parameters. The changes made by the bills are to the severity of the penalties and, in regards to firing at a dwelling or occupied structure, clarifying that firing on an empty building can net the same punishment as firing on one full of people. As to prison overcrowding, the solution is not to avoid locking up those who pose a danger to others. People who shoot guns from cars are dangerous. People who shoot at houses, at garages, at schools or businesses, are dangerous. The public needs to be protected.

POSITIONS:

A representative of the Oakland County Sheriff's Office testified in support of the bills. (2-12-14)

A representative of the Cass County Prosecutor's Office testified in support of the bills. (2-12-14)

The Michigan Sheriff's Association indicated support for Senate Bill 582. (2-12 and 3-19-14)

The Department of State Police indicated support for the bills. (2-12-14)

The Genesee County Prosecutor's Office indicated support for the bills. (3-19-14)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.