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House Bill 5336 (Substitute H-1 as reported with amendments)
House Bill 5347 (Substitute S-2 as reported by the Committee of the Whole)
Sponsor: Representative John Stakoe (H.B. 5336)
Representative Mike Nofs (H.B. 5347)
House Committee: Criminal Justice
Senate Committee: Judiciary

CONTENT

House Bill 5336 (H-1) would amend the Code of Criminal Procedure to include in the sentencing guidelines felony offenses proposed by House Bill 5347 (S-2), as shown in Table 1.

Table 1

| Violation | Felony Level | Statutory Maximum |
|--|--------------|-------------------|
| Operating audiovisual recording device in a theatrical facility – 2 nd offense. | G-Property | 2 years |
| Operating audiovisual recording device in a theatrical facility – 3 rd or subsequent offense. | F-Property | 4 years |

House Bill 5347 (S-2) would amend the Michigan Penal Code to prohibit and prescribe criminal penalties for knowingly operating an “audiovisual recording function” of a device in a facility where a motion picture was being exhibited, without the consent of the facility’s owner or lessee and of the motion picture’s licensor. (“Audiovisual recording function” would mean the capability of a device to record or transmit a motion picture or any part of a motion picture by technological means.)

The offense would be punishable as shown in Table 2.

Table 2

| Violation | Level | Maximum Imprisonment | Maximum Fine |
|---------------------------------------|-------------|----------------------|--------------|
| 1 st Offense | Misdemeanor | 1 year | \$10,000 |
| 2 nd Offense | Felony | 2 years | \$20,000 |
| 3 rd or Subsequent Offense | Felony | 4 years | \$40,000 |

The bill states that it would not prevent any lawfully authorized investigative, law enforcement, protective, or intelligence-gathering State or Federal agent or employee from operating a device’s audiovisual recording function in a theatrical facility where a motion picture was being exhibited, as part of an investigative, protective, law enforcement, or intelligence-gathering activity.

House Bill 5336 (H-1) is tie-barred to House Bill 5347.

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many offenders would be convicted of the proposed misdemeanor and felony offenses. The Class G felony would have a sentencing guidelines recommended minimum sentence range of 0-3 months to 7-16 months, while the Class F felony would have a sentencing guidelines recommended minimum sentence range of 0-3 months to 17-30 months. It is probable that most offenders would receive local sanctions for either felony unless they had extensive prior records. Local units incur the costs of misdemeanor probation, intermediate sanctions, and incarceration in a local facility, which vary by county. The State incurs the cost of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. Public libraries would benefit from any additional revenue available due to new penal fines.

Date Completed: 9-29-04

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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.