



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5135 (Substitute S-3)
Sponsor: Representative William Van Regenmorter
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 11-28-06

CONTENT

The bill would amend the Code of Criminal Procedure to do all of the following:

- Refer to "interactive video technology" rather than "closed circuit television" in provisions allowing a court to conduct certain proceedings by audio and video communication, and delete a provision disallowing this technology if the defendant requests physical presence before the court.**
- Revise provisions regarding peremptory challenges of potential jurors.**
- Allow, rather than require, a court to pay for a psychiatric evaluation in a case involving an insanity plea.**
- Allow a court to order an offender to pay the cost of compelling his or her appearance before the court.**
- In the case of an enhanced sentence for a habitual offender, prohibit the court from setting a maximum sentence that was less than the maximum term for a first conviction.**
- Expand the evidence that may be used to establish the existence of prior convictions when the prosecutor seeks to enhance the sentence for a habitual offender.**
- Revise the sentencing guidelines and certain directions for scoring them.**
- Repeal a section of the Code that prohibits the appointment of appellate counsel for review of a defendant's conviction or sentence when the defendant pleaded guilty, guilty but mentally ill, or no contest, except under certain circumstances.**

Video Proceedings

The Code allows a judge or district court magistrate to conduct initial criminal arraignments and set bail by two-way closed circuit television communication between a court facility and a prison, jail, or other place where a person is imprisoned or detained unless the defendant requests physical presence before the court. The bill would delete the limitation regarding the defendant's request and would refer to "interactive video technology" rather than "closed circuit television".

Peremptory Challenges

The Code provides that a person put on trial for an offense that is not punishable by death or life imprisonment is allowed to challenge peremptorily five of the people drawn to serve as jurors. The prosecuting officer also is allowed five peremptory challenges. In a case involving two or more defendants jointly tried for such an offense, each defendant is

allowed five peremptory challenges and the prosecutor is allowed five peremptory challenges for each defendant. The bill specifies that, on motion and showing of good cause, the court could grant one or more of the parties an increased number of peremptory challenges and the number of additional challenges could cause the various parties to have unequal numbers of challenges.

Currently, a person put on trial for an offense punishable by death or imprisonment for life is allowed to challenge peremptorily 20 of the people drawn to serve as jurors and the prosecuting officers are allowed 15 peremptory challenges. In cases involving two or more defendants being tried jointly, each is allowed 20 peremptory challenges and the prosecutor is allowed 15 challenges for each defendant.

Under the bill, instead, both a person being tried alone for an offense punishable by death or life imprisonment and the prosecutor would be allowed 12 peremptory challenges. In a case punishable by death or life imprisonment that involved two or more defendants, each would be allowed peremptory challenges as shown in Table 1.

Table 1

Number of Defendants	Peremptory Challenges
Two	10 each
Three	Nine each
Four	Eight each
Five or more	Seven each

The prosecuting officers would be allowed the total number of peremptory challenges to which all the defendants were entitled.

The bill specifies that, on motion and showing of good cause, the court could grant one or more of the parties an increased number of peremptory challenges and the number of additional challenges could cause the various parties to have unequal numbers of challenges.

Insanity Defense

If a defendant in a felony case proposes to offer in his or her defense testimony to establish his or her insanity at the time of the alleged offense, the defendant may secure an independent psychiatric evaluation by a clinician of his or her choice. The evaluation must be conducted at the defendant's own expense or, if indigent, at the expense of the county. The bill instead would allow the court to order the county to pay for an independent psychiatric evaluation, upon a showing of good cause, if the defendant were indigent.

Criminal Offender's Costs

The bill specifies that, in addition to any fine, cost, or assessment imposed on a defendant who pleaded guilty or no contest, or who was found guilty, the court could order the defendant to pay any additional costs incurred in compelling his or her appearance.

The bill also would allow the court, except as otherwise provided by law, to apply payments received on behalf of a defendant that exceeded the total of any fine, cost, fee, or other assessment imposed in the case, to any fine, cost, fee, or assessment that the same defendant owed in any other case.

Habitual Offender

The Code provides for enhanced sentencing for a person who commits a felony in Michigan and who has previously been convicted of a felony or an attempt to commit a felony in this

or another state. The bill specifies that the court could not fix a maximum sentence that was less than the maximum term for a first conviction.

Under the habitual offender provisions, the existence of the defendant's prior conviction or convictions must be determined by the court, without a jury, at sentencing, or at a separate hearing scheduled for that purpose before sentencing. The existence of a prior conviction may be established by any evidence that is relevant for that purpose, including one or more of the following:

- A copy of a judgment of conviction.
- A transcript of a prior trial or a plea-taking or sentencing proceeding.
- Information contained in a presentence report.
- A statement of the defendant.

The bill would add to that list a copy of a court register of actions.

Sentencing Guidelines

The bill would add a sentencing guidelines designation for a criminal sexual psychopath leaving the State without permission (MCL 330.1944). The offense would be listed as a Class F felony against the public safety, with a four-year statutory maximum sentence.

In the sentencing guidelines scoring instructions to determine the recommended minimum sentence range, the Act specifies that if the offender is being sentenced for a violation described in Section 18 of Chapter XVII of the Code (offenses that have a variable statutory maximum sentence), the court must determine the offense class, offense variable level, and prior record variable level based on the underlying offense. The bill, instead, would require the court to do both of the following:

- Determine the offense variable level by scoring the offense variables for the underlying offense and any additional offense variables for the offense category indicated in Section 18.
- Determine the offense class based on the underlying offense.

If there were multiple underlying felony offenses, the offense class would be the same as that of the underlying felony offense with the highest crime class. If there were multiple underlying offenses, but only one was a felony, the offense class would be the same as that of the underlying felony offense. If no underlying offense were a felony, the offense class would be G.

Under the sentencing guidelines, prior record variable 1 is prior high severity felony convictions, which are convictions for a crime listed in offense class M2 (second-degree murder), A, B, C, or D or for a felony under a law of the United States or another state corresponding to a crime listed in those offense classes, if the conviction was entered before the sentencing offense was committed. The bill would include those offense classes and both of the following:

- A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.
- A felony under a law of the U.S. or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.

Prior record variable 2 is prior low severity felony convictions, which are convictions for a crime listed in offense class E, F, G, or H or for a felony under a law of the United States or another state that corresponds to a crime listed in those offense classes, if the conviction

was entered before the sentencing offense was committed. The bill would include those offense classes and both of the following:

- A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.
- A felony under a law of the U.S. or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.

Prior record variable 3 is prior high severity juvenile adjudications, which are juvenile adjudications for conduct that would be a crime listed in offense class M2, A, B, C, or D if committed by an adult or for conduct that would be a felony under a law of the United States or another state corresponding to a crime listed in those offense classes if committed by an adult, if the order of disposition was entered before the sentencing offense was committed. The bill would include those offense classes and both of the following:

- A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.
- A felony under a law of the U.S. or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of 10 years or more.

Prior record variable 4 is low severity juvenile adjudications, which are juvenile adjudications for conduct that would be a crime listed in offense class E, F, G, or H if committed by an adult or for conduct that would be a felony under a law of the United States or another state corresponding to a crime listed in offense E, F, G, or H if committed by an adult, if the order of disposition was entered before the sentencing offense was committed. The bill would include those offense classes and both of the following:

- A felony that is not listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.
- A felony under a law of the U.S. or another state that does not correspond to a crime listed in offense class M2, A, B, C, D, E, F, G, or H and that is punishable by a maximum term of imprisonment of less than 10 years.

Appointed Appellate Counsel

Under the Code, a defendant who pleads guilty, guilty but mentally ill, or nolo contendere (no contest) may not have appellate counsel appointed for review of his or her conviction or sentence, except under certain circumstances (MCL 770.3a). The bill would repeal this section. (The U.S. Supreme Court, in the 2005 case of *Halbert v Michigan*, ruled that provision in violation of the U.S. Constitution's due process and equal protection clauses.)

MCL 767.37a et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Lindsay Hollander
Stephanie Yu

S0506\5135sa

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.