

Legislative Analysis



REVISE ELEMENTS OF OFFENSE VARIABLE 7

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House Bill 5157

Sponsor: Rep. Brian Banks

Committee: Criminal Justice

Complete to 1-22-14

A SUMMARY OF HOUSE BILL 5157 AS INTRODUCED 11-14-13

The bill would revise the elements constituting Offense Variable 7 (*aggravated physical abuse*) within the sentencing guidelines to include egregious conduct against the victim.

The penalty prescribed for most felony crimes in Michigan are indeterminate, meaning that the statute sets the maximum term of imprisonment. The sentencing range appropriate for a specific offender convicted of a felony is determined by "scoring" the offense and then plotting the score on a grid relating to the crime class. Points are scored for such things as an offender's prior record and elements specific to the crime (offense variables) and the crime class (property crime, crime against a person, etc.). Depending on the score and the grid used, a sentencing range is determined that either requires a judge to send a person to prison, grants the judge discretion to send the person to prison or to jail, or grants discretion to send the person to jail and/or probation. There are 20 offense variables.

Offense Variable 7 – aggravated physical abuse – is scored when a crime is committed against a person. If a victim was treated with sadism, torture, or excessive brutality, or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense, 50 points must be added to the offender's score. If no victim received such treatment, then 0 points are scored for this variable.

House Bill 5157 would amend the Code of Criminal Procedure (MCL 777.37) to revise Offense Variable 7 to instead apply if the victim were treated with sadism, torture, excessive brutality, or *similarly egregious* conduct designed to substantially increase the fear and anxiety a victim suffered during the offense (highlighting denotes the revision). If so, 50 points would still be scored (and 0 points if the crime did not include such conduct).

FISCAL IMPACT:

The bill could increase costs for state and local correctional systems. Information is not available on the number of persons that might be convicted under the new terms. Felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. 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. The costs of local incarceration in a county jail vary by

jurisdiction. 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.

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