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HOME INVASION

Senate Bill 260 with House committee
amendment
First Analysis (4-14-94)

Sponsor: Sen. William Van Regenmorter
Senate Committee: Judiciary
House Committee: Judiciary

THE APPARENT PROBLEM:

Under the Michigan Penal Code, breaking and entering an "occupied dwelling house" with the intent of committing a felony or larceny in it is a felony punishable by a maximum prison term of 15 years, rather than the 10 years that otherwise applies to breaking and entering a building. The code further provides that an occupant need not be physically present at the time of a break-in in order for a dwelling to be considered an occupied dwelling house; rather, the dwelling need only be one that is habitually used as a place of abode.

However, dangerousness of the offense and the risks to a home's occupant vary greatly according to whether the occupant is home at the time, and whether the burglar is armed. It is obvious to many that an armed person who breaks into a home while the resident is present is committing a more serious offense than an unarmed person who breaks into a house when no one was home.

A revision of the breaking and entering statute has been proposed to establish various degrees of the offense, depending on the circumstances of its commission.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to establish three degrees of home invasion, which would apply to breaking and entering (or entering without permission) a dwelling with intent to commit a felony or a larceny. A "dwelling" would be "a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter." Imposition of a penalty under the bill would not bar imposition of a penalty under any other applicable law.

It would be first-degree home invasion if the offender was armed with a dangerous weapon at any time while present in the home, and another person was lawfully present in the building. First-degree home invasion would be a felony punishable by up to 20 years in prison, a fine of up to \$5,000, or both. In addition, a sentencing court could order that a sentence for first-degree home invasion be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

It would be second-degree home invasion if either the offender was armed with a dangerous weapon, or someone was home at the time. Second-degree home invasion would be a felony punishable by imprisonment for up to 20 years, a fine of up to \$4,000, or both.

It would be third-degree home invasion if the offender was not armed at any time and there was no one home at the time. That is, it would be third-degree home invasion simply to break and enter a dwelling (or enter a dwelling without permission) with intent to commit a felony or a larceny. Third-degree home invasion would be a felony punishable by up to 15 years in prison, a fine of up to \$3,000, or both.

A "dangerous weapon" would be: a loaded or unloaded firearm, whether operable or inoperable; a knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon; or an object that was likely to cause death or bodily injury when used as a weapon and that was used as a weapon or carried or possessed for use as a weapon.

MCL 750.110 and 750.110a

Senate Bill 260 (4-14-94)

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted an amendment to the bill that deleted a reference to private apartments in the portion of the law addressing breaking and entering certain buildings that are not dwellings.

FISCAL IMPLICATIONS:

With regard to an earlier version of the bill, the Senate Fiscal Agency said that the bill would have an indeterminate impact on state and local government. The bill could result in increased expenditures for first-degree and second-degree home invasion violations. (The penalty for third-degree home invasion would be the same as that currently established for breaking and entering of an occupied dwelling.)

In 1992, there were 616 prison commitments for breaking and entering (B&E) of an occupied dwelling, with an average minimum sentence of 3.9 years. If it was assumed that only those individuals at the upper end of the distribution of minimum terms would be affected by the new maximum sentences and that judges did not change their sentencing practices for the average B&E offender, after ten years annual costs could increase by approximately \$5.5 million, which is the cost of the additional 3.3 years for offenders who have previously received 10-year sentences (under controlling case law, a minimum sentence may not be more than two-thirds of the statutory maximum for the offense) and who under the bill would receive minimum sentences equal to two-thirds of the new maximum, or 13.3 years.

On the other hand, if one assumed that the increase in length of maximum sentences would shift the average sentence length of all B&E offenders, then the increased annual costs could approach \$12 million. This figure assumes that the 33 percent increase in maximum sentence length would increase the average sentence length for all offenders by 33 percent. (11-23-93)

ARGUMENTS:

For:

By replacing B&E of a dwelling with several degrees of "home invasion," the bill would ensure that those B&E offenders who committed their crimes under more dangerous circumstances (that is, while armed or while someone was home) would be treated more severely than those who committed their burglaries unarmed and while no one was at home. A burglary of a dwelling truly is an invasion, particularly if it is committed while armed or when an occupant is present. By increasing available penalties, and by authorizing consecutive sentences for the most serious offenders, the bill would help to deter offenders who might otherwise carry a weapon or enter when someone was home, and it would provide for longer incarceration and incapacitation of offenders who were not so deterred. The bill's proposals are both reasonable and warranted.

Against:

The offenses addressed by the bill are already addressed by current law and supreme court order. The supreme court's sentencing guidelines for burglary already weight such factors as whether a burglar was armed or whether an occupant was present in the home. Where such factors are present, guidelines call for stiffer minimum sentences than might otherwise be imposed.

Response:

Guidelines are used to establish ranges for minimum sentences; guidelines sentences must still be within statutory maximums; it is the maximum sentence that the bill would increase, along with providing for stiff criminal fines.

Against:

Less than eight percent of burglaries are ever cleared by arrest, suggesting that if increased penalties are to have any appreciable deterrent effect, there would have to be greater certainty of being caught and punished. Rather than deter criminals, the bill would be more likely to lead to longer incarceration of the relatively few who are

caught. Longer incarceration would tend to worsen problems with prison overcrowding and the corrections budget, and drain funds away from the educational and rehabilitative programs that offer perhaps the best chance at significantly reducing the crime rate. At the least, any proposals to substantially modify criminal penalties or create new crimes should await enactment of sentencing guidelines legislation that would ensure a consistent and comprehensive approach to the use of prison space and reserve that space for the worst offenders.

Against:

The bill's definition of "dwelling" would include not only houses, but also structures attached to them. This means, for example, that a person could be convicted of second-degree home invasion, and imprisoned for up to 20 years, simply for entering an attached garage -- or even a dog house -- without permission, when someone was home. If the bill is going to extend to attached structures, it should at least exclude garages, as well as other attachments used for storage, recreation, or animal housing.

Against:

Concerns have been expressed about how revision of the B&E statute could have unanticipated ramifications for case law. At present, what constitutes an occupied dwelling house has been extensively refined by the development of case law; by offering a definition of "dwelling," the bill may inadvertently change the way the law is applied and generate confusion and inconsistent application in courts across the state.

Response:

Testimony before the House Judiciary committee indicated that the bill's definition was taken from existing case law.

Against:

The bill has been criticized for not meaningfully distinguishing between first- and second-degree home invasion. The offenses differ according to whether both of the aggravating factors (being armed, entering when someone was home) were present, or whether only one of them applied; however, the punishments differ only by a higher fine being authorized for first-degree home invasion. Some may feel that lower penalties for second-degree home invasion are appropriate, while others may feel that what is described as second-degree

home invasion should be treated as first-degree home invasion and punished more severely.

POSITIONS:

The Department of State Police supports the bill. (4-13-94)

The Prosecuting Attorneys Association of Michigan supports the bill. (4-12-94)

The Fraternal Order of Police supports the concept of the bill. (4-12-94)

The Department of Corrections has not taken a position on the bill, but has found the bill's impact on the prison population to be indeterminable. (4-12-94)

The Michigan Council on Crime and Delinquency opposes the bill as duplicative of current law. (4-12-94)