



**House
Legislative
Analysis
Section**

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FELONY FOR REPEAT ABUSE

**Senate Bill 326 (Substitute H-2)
First Analysis (3-17-94)**

**Sponsor: Senator Joanne G. Emmons
Senate Committee: Judiciary
House Committee: Judiciary**

THE APPARENT PROBLEM:

Despite a growing public awareness about domestic violence and its consequences for family members and society as a whole, and despite the enactment of various laws aimed at reducing domestic violence and providing shelter and services to victims of abuse, domestic violence continues at an alarming rate. Nationwide, some three to four million women annually are physically attacked by their husbands or partners; about four women each day are killed. Michigan's domestic violence figures are equally sobering: in 1991, there was a domestic violence-related homicide every five days. In 1985, local agencies reported 16,576 domestic violence offenses to the Michigan State Police; in 1990, that figure was 25,436; in 1991, 27,201, and in 1992, 29,891. While it is unclear to what degree these figures reflect an increase in reporting, rather than an increase in the rate of violence, it is clear that domestic violence remains a significant problem in this state.

One approach to dealing with domestic violence is to have strong laws against domestic assault. Such laws make it clear to batterers that society does not countenance such behavior, and make it harder for a male batterer to believe that it is his right to "discipline" his wife or that a physical assault may be justified by verbal provocation. Spousal abuse often occurs over a long period of time, and repeat offenses are a particular problem in domestic violence situations. However, the penal code does not distinguish domestic assault from other forms of assault, with the result that a repeat abuser may be prosecuted for simple assault, a 90-day misdemeanor. Further, as fingerprinting and arrest reporting requirements apply only to offenses punishable by at least 93 days in jail, prosecution as a simple misdemeanor may operate to shroud instances of repeat abuse. Amendments to create special penalties for domestic abuse have been proposed.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to distinguish between assaults where there was an element of domestic violence and assaults where there was no spousal relationship between the offender and the victim. It also would increase the maximum fine for simple assault, establish felony penalties for repeat domestic assault offenses, and make a first-offense simple assault that was a domestic assault punishable by up to 93 days in jail, rather than 90 days (this change to 93 days would cause statutory fingerprinting and criminal reporting requirements to apply). The bill would take effect July 1, 1994. However, the bill could not take effect unless House Bill 4325 also was enacted. (A Senate substitute for House Bill 4325 would amend provisions on aggravated assault to increase the maximum fine for aggravated assault and to provide for escalating penalties for repeat offenses of aggravated domestic assault.) Further details follow.

Simple assault. The maximum fine for ordinary (nondomestic) simple assault would be increased from \$100 to \$500. A simple assault would continue to also be punishable by up to 90 days in jail.

Simple assault-domestic. The bill would establish special penalties for assaults against current or former spouses, current or former household members, or people with whom the offender had a child. A first offense domestic assault would be a misdemeanor punishable by up to 93 days in jail, and/or a maximum fine of \$500. A simple domestic assault where there was a previous conviction for assaulting a spouse or household member would be punishable by imprisonment by up to one year, and a fine of up to \$1,000. If the person had two or more prior convictions, the offense would be a felony punishable by imprisonment for up to two years and a fine of up to \$2,500. Previous convictions could be for simple assault (or a corresponding local ordinance), aggravated assault, domestic assault (simple or aggravated), assault with

Senate Bill 326 (3-17-94)

intent to murder, assault with intent to do great bodily harm, or assault with intent to maim.

MCL 750.81

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted a substitute bill that differed from the Senate-passed version in establishing felony penalties for third-offense domestic assault convictions, in providing for higher fines, in specifying an effective date of July 1, 1994 (rather than a 1993 date), in omitting procedures for charging and sustaining charges of repeat domestic assaults (those procedures are part of the Senate substitute for House Bill 4325), and in tie-barring the bill to House Bill 4325.

FISCAL IMPLICATIONS:

With regard to an earlier version of the bill, the Senate Fiscal Agency noted that the bill would have no impact on state spending and an indeterminate impact on local spending. The agency noted that there were no data available that would indicate how many people with previous assault convictions might be convicted of domestic assault. (2-25-93)

ARGUMENTS:

For:

Many perpetrators of domestic violence fail to take responsibility for their actions and blame the victim; to the degree that society fails to hold these people accountable for their actions, it reinforces this belief and decreases the chances that the person will change his or her behavior. Domestic violence is not a private matter, and legal intervention can effectively get this message across. To this end, legislation has been proposed that would strengthen law enforcement response to domestic violence. The bill, part of this larger package, would further those aims by establishing enhanced penalties for repeated spouse abuse, and requiring spouse abuse arrests to be reported to the state police. More complete arrest records would help to ensure that courts considering probation were informed of an offender's background, and stronger sanctions for spouse abuse would make state policy on such offenses clear to all, including would-be batterers who might otherwise consider it a right to beat a spouse. Stiffer penalties for repeat offenses would help to ensure that the offender understands the seriousness of a first conviction.

Response:

The bill proposes to make first-offense domestic assault a 93-day misdemeanor, thereby ensuring that such arrests are fingerprinted and reported to the state police. However, to the degree that domestic assaults are processed as violations of local ordinances, repeat offenders could continue to be unidentified as such, because local ordinance penalties are limited to 90 days in jail.

For:

The bill would enact a long-overdue increase of the fine for simple assault. That fine has not been increased for some time, and is now inordinately low.

Against:

The bill would apply to current or former spouses or household members, and people who had a child in common. However, this application may be in need of refinement to better capture the sorts of situations commonly considered to be domestic violence--situations where there was a romantic or familial relationship of unequal power between the people involved. As the bill is now written, the attacked household member could be a sibling or unrelated housemate of greater stature and strength, in which case the bill would be overbroad. On the other hand, the bill also arguably is too narrow because it fails to address relationships where there had been dating, but no child or cohabitation; the abuse that sometimes arises in dating relationships can, unfortunately, be just as deadly as spousal abuse.

Response:

Special laws for spousal abuse have developed at least in part because of an historical failure by the criminal justice system to respond adequately to in-family domestic assault. To the extent that this focus is lost, the law could be diluted. Also, to include dating relationships in the bill would lead to difficulty in defining what constitutes a dating relationship.

POSITIONS:

In its report issued September 1991, the Inter-agency Domestic Violence Task Force recommended that any counseling ordered under a deferred sentence probation be conditioned in part on an assurance that there will be reporting by all courts to the state police of arrests for acts of violence.

**The Department of State Police supports the bill.
(3-15-94)**

**The Domestic Violence Prevention and Treatment
Board supports the bill. (3-15-94)**

**The Michigan Coalition Against Domestic Violence
supports the bill. (3-15-94)**

**The Prosecuting Attorneys Association of Michigan
supports the bill. (3-15-94)**

**The Michigan District Judges Association supports
making first-offense domestic assault a 93-day
misdemeanor. (3-16-94)**

Senate Bill 326 (3-17-94)