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SFA



BILL ANALYSIS

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Senate Bill 755 (as passed by the Senate)
Sponsor: Senator Loren Bennett
Committee: Education

Date Completed: 8-18-98

RATIONALE

The 1997 Youth Risk Behavior Survey of 3,983 Michigan students in grades nine through 12 indicated that a significant percentage of the State's youths may face violent situations in their schools. The survey of 71 high schools, administered as part of a nationwide survey by the National Centers for Disease Control and Prevention in Atlanta, noted that one in five Michigan high school students had carried guns or knives to school and 8% carried a weapon; one in 10 students surveyed had been threatened or injured with a weapon on school property; more than one-third had property stolen or vandalized at school; and about one in six had been at a fight on school property. Another study, commissioned by the National Center for Education Statistics (NCES) and entitled the "Principal/School Disciplinarian Survey on School Violence, 1996-97", found that 57% of U.S. public elementary and secondary schools reported experiencing at least one incident of crime or violence in the 1996-97 school year and 10% of all public schools experienced at least one serious violent crime, such as murder, rape or other type of sexual battery, suicide, physical attack or fight with a weapon, or robbery. Given these statistics about the educational environment nationwide and in Michigan, it has been suggested that more needs to be done to ensure that schools are safe for students and teachers. Some people believe that one approach to school violence would be to allow enhanced sentencing for a person convicted of a crime committed on school property against a student or school personnel.

CONTENT

The bill would amend the Code of Criminal Procedure to allow a prosecuting attorney to seek an enhanced sentence for a person convicted of a felony or misdemeanor that was committed on school property against a

teacher, administrator, employee, volunteer, or student of that school; and establish sentences that would apply if a prosecutor sought sentence enhancement.

(The bill would define "school" as a public or private school offering developmental kindergarten, kindergarten, or any grade from one through 12; and "school property" as any building or real property used by a school for school purposes or for functions or events sponsored by a school.)

Sentence Enhancement

If a person were convicted of a crime that occurred on school property and was against a teacher, administrator, employee, or volunteer of the school or a student at that school, the following would apply if the prosecuting attorney sought to enhance the defendant's sentence under these provisions:

- The person would be guilty of a felony and would have to be punished by imprisonment for life or any term of years but not less than 20 years, if the crime were punishable by imprisonment for life or any term of years.
- The person would be guilty of a felony punishable by imprisonment for up to twice the term authorized for the crime and/or a fine of up to twice the fine authorized for the crime, if the crime were a felony other than a crime described above or were punishable by imprisonment for more than one year.
- The person would be guilty of a misdemeanor punishable by imprisonment for up to twice the term authorized for the crime and/or a fine of not more than twice the fine authorized for the crime, if the crime were a misdemeanor punishable by imprisonment for not more than one year.

If a mandatory minimum sentence were prescribed for a crime for which the court imposed an enhanced sentence of imprisonment under the bill, the court would have to impose a minimum sentence that was equal to or greater than that mandatory minimum.

Notice

A prosecuting attorney could seek to enhance a defendant's sentence by filing a written notice of his or her intent to do so within 21 days after the defendant's arraignment on the complaint or information charging the offense or, if arraignment were waived, within 21 days after the filing of the complaint or information charging the offense. A notice of intent to seek an enhanced sentence would have to list the facts that would or could be relied upon for sentence enhancement. The notice would have to be filed with the court and served upon the defendant or his or her attorney within the time specified in the bill. The notice could be served personally upon the defendant or his or her attorney at the arraignment on the complaint or information charging the offense or could be served in the manner provided by law or court rule for service of written pleadings.

The prosecuting attorney could file notice of intent to seek an enhanced sentence under the bill after the defendant had been convicted of the offense or a lesser offense upon his or her plea of guilty or nolo contendere if the defendant pleaded guilty or nolo contendere at the arraignment on the complaint or information charging the offense, or within the time allowed for filing the notice under the bill. If the prosecuting attorney filed a notice under the bill, the defendant would have to have an opportunity to withdraw his or her plea before sentencing.

The court would have to determine by a preponderance of the evidence and without a jury whether the crime occurred on school property and had been against a teacher, administrator, employee, or volunteer of that school or a student at that school. The court would have to make this determination at sentencing or at a separate hearing scheduled for that purpose before sentencing. The basis for enhancement could be established by any evidence that was relevant for that purpose, including but not limited to one or more of the following: a transcript of the trial, a prior trial, or a plea-taking or sentencing proceeding; information contained in a presentence report; or, a statement of the defendant.

Proposed MCL 769.15

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Teaching and learning should take place in schools where the environment is secure, and neither students nor school personnel should fear for their safety. When the problems of the educational system are examined, one of the most often raised concerns is school safety. Recent studies show that incidents of violence occur regularly in many schools across the State. Michigan has taken steps to protect teachers and students. For example, Public Act 328 of 1994 requires school officials to expel a pupil who unlawfully possess a weapon in a weapon free school zone, commits arson in a school building or on school grounds, or commits criminal sexual conduct (CSC) in a school building or on school grounds. While Public Act 328 and other actions taken by the State and local school districts are helpful, the threat of violence still is prevalent in many schools. The bill would permit a prosecuting attorney to seek an enhanced sentence for a person who committed a felony or misdemeanor against school personnel or a student on school property. The possibility of receiving an enhanced sentence could help to eliminate the threat of violence in schools by deterring persons from engaging in criminal activities at schools. Creating a safe school environment would help educators to teach and students to learn.

Opposing Argument

It is not certain whether increased penalties for crimes serve as effective deterrents. Many people contend that the problem of violence in schools is a symptom of greater societal problems and until these are addressed, the attempt to lower the incidence of violence in schools through increased penalties will be ineffectual. Furthermore, many incidents of school violence involve students assaulting students or students assaulting teachers. Many of these offending students are juveniles. In fact, the NCES study noted that while serious violent crimes occurred more in middle and high schools, they also have been committed in elementary schools. Persons under the age of 17 in Michigan generally are adjudicated as juveniles and come under the jurisdiction of the family court. Consequently, unless a student accused of committing an assaultive crime at school was 17

years of age or older or was prosecuted as an adult, he or she would not be subject to the bill's option of enhanced sentencing.

Response: Under many circumstances, a juvenile may be prosecuted as an adult in Michigan. If a person is at least 14 years of age and is accused of committing an offense that would be a felony if committed by an adult, the juvenile may be prosecuted and sentenced as an adult in circuit court if the family court waives jurisdiction. A juvenile who is at least 14 *will* be prosecuted and sentenced as an adult, unless the prosecutor files in family court, if the juvenile is accused of committing a "specified juvenile violation" (e.g., murder, first-degree CSC, armed assault with intent to rob and steal or to do great bodily harm, or assault with intent to maim). In addition, if a juvenile of any age commits a violation of the law (other than a specified juvenile violation), the family court may designate the case as one in which the juvenile will be tried as an adult in the family court; upon conviction, the court must enter a disposition or impose a criminal sentence, and may delay imposing a sentence of imprisonment.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an indeterminate, yet cost increasing effect on State and local government. The enhanced punishment would be based on the statutory sentence, and would either double or increase the term of imprisonment and/or fine. The types and numbers of crimes committed on school property or against school personnel are unknown. The crime location is neither reported in the uniform crime statistics, nor available in combined school records. However, the location of hate crimes is recorded, and in 1996, about 13% of hate crimes occurred at schools or colleges. The relation of hate crimes to other sorts of crime is unknown. As the number of crimes committed at schools each year is unknown, so too, the number of cases in which the prosecutor would ask for enhanced penalties is indeterminate.

Fiscal Analyst: K. Firestone

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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.