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THIRD DEGREE HOME INVASION

House Bill 4355 (Substitute H-2)
Sponsor: Rep. Jim Howell

House Bill 4356 (Substitute H-3)
Sponsor: Rep. Jennifer Faunce

First Analysis (4-15-99)

Committee: Criminal Law and Corrections

THE APPARENT PROBLEM:

Public Act 270 of 1994 amended Penal Code to create the felony crime of "home invasion", which replaced the offense of breaking and entering a dwelling. The crime of home invasion differs from the prior breaking and entering crime in that it provides for differing degrees depending upon the circumstances surrounding the commission of the crime, in particular whether the offender was armed or if someone was lawfully within the home when the crime took place.

Since an offender who is armed or enters a home while it is occupied provides a greater threat than one who is unarmed and enters an unoccupied dwelling, one of the basic aims of the statute is to protect people by providing an enhanced penalty where the would-be burglar was armed or had unlawfully entered an occupied home. However, prosecutors have recently noted that the home invasion statute fails to provide any penalty where the offender breaks into a home or enters it without permission for the purpose of assaulting someone in the house. As it stands, the law only deals with situations where the offender intended to commit a felony or a larceny; in order for an assault to be a felony, it must be done with a dangerous weapon, with intent to commit murder, or with intent to do great bodily harm less than murder. If an offender breaks into a home to beat up his or her ex-spouse, the home invasion statute provides no grounds for punishment. It has been suggested that an offender who invades a person's home in order to cause him or her or his or her guests harm should be punished at least as severely as an offender who intended to steal property.

THE CONTENT OF THE BILLS:

Under current law, the crime of first degree home invasion is punishable by up to 20 years imprisonment and/or a \$5,000 fine. A person may be guilty of the crime if he or she breaks and enters a dwelling with the intent to commit a felony or larceny in the dwelling, or enters a dwelling without permission and is either armed with a dangerous weapon or another person is lawfully present within the dwelling at the time. If no one is in the house at the time of the offense and the offender does not have a weapon, the crime is second degree home invasion and is punishable by 15 years imprisonment and/or a fine of \$3,000. House Bill 4356 would amend the Penal Code (MCL 750.110a) to change the elements of first and second degree home invasion to include instances where an offender had intended to commit an assault in the dwelling or had committed a felony, larceny, or assault during the breaking and entering or unauthorized entry, and to establish and set penalties for the crime of third degree home invasion.

Third degree home invasion would be a felony, punishable by up to 5 years in prison, a fine of up to \$2,000, or both. The crime of third degree home invasion would involve breaking into a dwelling or entering a dwelling without permission under one of the following aggravating circumstances:

- a) the offender intended to commit or committed a misdemeanor while in the dwelling, or
- b) at the time the breaking and entering or entry without permission occurred, the offender violated any of the following ordered to protect a named person or

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persons: a term or condition of probation, parole, or a personal protection order (PPO), or violated a bond or bail condition or any other condition of pretrial release.

House Bill 4355 would amend the Code of Criminal Procedure (MCL 777.16f) to include the crime of third degree home invasion in the sentencing guidelines. The crime would be categorized as a crime against a person and listed as a class E crime with a maximum sentence of five years.

Both bills would take effect October 1, 1999. House Bill 4355 would not take effect unless House Bill 4356 was also enacted.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have an indeterminate impact on state and local government. The bills' impact would depend upon the effect on prosecutorial charging practices and time served in state and/or local correctional facilities, along with the impact on the amount of fine revenue collected. (4-14-99)

ARGUMENTS:

For:

The bills would have two positive results. First, they will expand first and second degree home invasion to include situations where the offender intended to commit an assault in the dwelling and where the offender committed a felony, larceny, or an assault during the unlawful entry of the home. Second, the bill will create the crime of third degree home invasion to provide a specific and more serious penalty for offenders who unlawfully enter a dwelling and violate a term or condition of probation, parole, or a personal protection order, or a condition of bail or bond or any condition of pretrial release.

People have a right to feel safe in their homes; an assault that occurs in the victim's home by virtue of the unlawful entry of the offender is different than one that occurs in the street and deserves more serious punishment. A criminal who has the temerity to enter another person's home with the intent of harming that person or someone else in the house deserves at least as harsh a sentence as a criminal who enters the house to steal. The current law emphasizes property over people by providing serious penalties for offenders who intend to steal but none for those who intend to

commit an assault (unless the assault is severe enough to be a felony). In particular, the bills will make it easier to prosecute assault cases involving an unlawful entry into a home and will provide an additional means of dealing with people who violate probation, parole, personal protection orders, bail or bond conditions or any other conditions of pretrial release. The bills will also make it more difficult for offenders to avoid the penalties for first or second degree home invasion by claiming they had no intent to commit a crime when they entered the dwelling. It is hoped that the penalties will have the effect of deterring some would-be offenders from engaging in these activities - but if not, the bills will at least make it easier to prosecute these crimes and to thereby keep such people off the street.

In addition, the bills fulfill one part of the recommendations made by the Prosecuting Attorneys Association of Michigan (PAAM) and the Domestic Violence Prevention and Treatment Board (DVPTB) task force, which issued a report and recommendations for changes in domestic violence laws in July of 1996.

Against:

The need for such a change in the law is exaggerated, as the offenses for which the bills would provide penalties are already punishable. An assault is a punishable crime and violations of probation, parole, personal protection orders, and conditions of pretrial release are all punishable as well. In fact, such violations can result in revocation of the parole, probation or pretrial release and violations of a PPO can result in jail for contempt.

Further, according to the Criminal Defense Attorneys of Michigan, the bills' provisions allowing for the use of an offender's status as a violator of parole as an element of the crime could run afoul of the Fifth Amendment's protections against being punished twice for the same crime, since the offender could also face punishment for his or her violation of the conditions or terms of parole for which the sentencing guidelines require a consecutive sentence. Thus, the sentence for third degree home invasion would be based in part on the offender's violation of his or her parole and then he or she would also be subjected to an additional sentence for the violation of the parole.

Finally, under the sentencing guidelines, prior record variable six uses an offender's status as a violator of condition of parole, probation, or bond as a factor for an enhanced sentence. Thus, when applied in

conjunction with sentencing guidelines, the provisions using the offender's status in such cases as an element of the crime of third degree home invasion could unfairly result in a double counting of that status - first as an element of the crime and then to enhance the penalty the person received under the guidelines.

Response:

The problem of double counting could be resolved by amending House Bill 4355 to prevent the use of prior record variable six when calculating a sentence for an offender convicted of third degree home invasion based on the offender's status as a violator of conditions of parole, probation, or a condition of pretrial release.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bills. (4-13-99)

The Michigan Coalition Against Domestic and Sexual Violence supports the bills. (4-13-99)

The Criminal Defense Attorneys of Michigan oppose the bills. (4-14-99)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.