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ORDINANCES: 93-DAY JAIL TERM

House Bill 4580 (Substitute H-1)

Sponsor: Rep. Jennifer Faunce

House Bill 4581 (Substitute H-1)

Sponsor: Rep. William O'Neil

House Bill 4582 (Substitute H-1)

Sponsor: Rep. Valde Garcia

House Bill 4583 (Substitute H-1)

Sponsor: Rep. Larry Julian

House Bill 4584 (Substitute H-1)

Sponsor: Rep. Jim Howell

**House Bill 4585 with committee
amendment**

Sponsor: Rep. Gilda Jacobs

First Analysis (5-5-99)

**Committee: Criminal Law and
Corrections**

THE APPARENT PROBLEM:

In 1994, the legislature enacted laws to provide a penalty of up to 93 days' imprisonment for certain low level offenses. The enhanced penalties were adopted, in part, because the 93-day penalty would trigger statutory fingerprinting and criminal reporting requirements. When a person is arrested for an offense carrying a penalty exceeding 92 days, he or she is fingerprinted and the fingerprints are sent to the Criminal Records Division of the Department of State Police and the Federal Bureau of Investigation. As a result, a number of state law violations provide misdemeanor penalties of up to 93 days imprisonment, including larceny, embezzlement, receiving and concealing stolen property, and malicious destruction of property involving property worth less than \$200; domestic assault; first offenses of drunk driving and/or driving with a suspended license; and third degree retail fraud. Although these changes have allowed for better tracking of prior offenses when the offenders are prosecuted under state law, it has been noted that local units of government can and do adopt ordinances based on state statutes. However, jail penalties for local ordinance violations are typically limited by statute to

90 days. This has created a conflict because crimes punishable by a 90-day maximum penalty do not require fingerprinting and as a result do not provide the criminal history record for the crime that would allow an increased penalty for a second or subsequent offense. Legislation has been introduced to address this problem.

THE CONTENT OF THE BILLS:

The bills would amend various local government enabling statutes to allow penalties of imprisonment for up to 93 days for a violation of an ordinance if the violation substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days. (The maximum fine of \$500 would remain unchanged.)

House Bill 4580 would amend the Home Rule Cities Act (MCL 117.4i). House Bill 4581 would amend the Home Rule Village Act (MCL 78.24). House Bill 4582 would amend the General Law Village Act (MCL 66.2). House Bill 4583 would amend the Charter

Township Act (MCL 42.21). House Bill 4584 would amend Public Act 246 of 1945 (MCL 41.183), which deals with township boards.

House Bill 4585 would amend the portion of the Liquor Control Code regarding the purchase, consumption, or possession of alcoholic liquor by minors to clarify that subsequent convictions or juvenile adjudications are subject to increasing penalties. Under the current law, a first violation is a misdemeanor subject to a fine of no more than \$100 and the possibility of being ordered to participate in a substance abuse prevention or treatment program, perform community service, and/or undergo substance abuse screening and assessment. Upon a second violation, the penalty is increased to a fine of not more than \$200, along with the other possible penalties. Upon a violation following two or more prior violations, the fine is increased to no more than \$500, along with the other possible penalties. The bill would clarify that in order to be subject to the enhanced penalties for subsequent offenses, there would have to have been a conviction or adjudication on the prior offense. Current law states that a violation that followed a prior "violation" would be subject to the enhanced penalties. In addition, the bill would remove definitions of "probate court disposition" and "work location" -- terms that were stricken by legislation last session.

The bills would take effect October 1, 1999. House Bills 4580 - 4584 are tie-barred to each other, so none could take effect unless the others also were enacted. In addition, each of those bills are also tie-barred to Senate Bill 560, which would amend the fingerprinting statute to require that fingerprints would only be submitted after a conviction, and provide means for convictions based upon local ordinances to be to be recorded. House Bill 4585 is tie-barred to House Bills 4580-4584 and to Senate Bill 560, as well as Senate Bills 556, 557, 558, and 559 which would revise some of the laws regarding drunk driving.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bills would permit local units of government to increase the maximum jail penalty from 90 days to 93 days for local ordinances based on state statutes

carrying 93-day maximums. The increased penalty would trigger fingerprinting and criminal history

record keeping requirements, and make them the same for arrests under both local ordinances and state law. The bills, therefore, will improve the criminal justice system's ability to track repeat offenders.

Furthermore, the bills will not increase penalties in and of themselves. Local units will have to adopt the increased penalties as part of local ordinances; without local action, the bills will have no effect.

POSITIONS:

The Michigan Townships Association supports the bills. (5-4-99)

The Michigan Municipal League supports the bills. (5-4-99)

The Department of State Police supports the bills. (5-4-99)

The secretary of state supports the entire package of bills (Senate Bills 556 - 560 and House Bills 4580 - 4585). (5-4-99)

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.