
Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 946 (as introduced 12-11-01)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 1-28-02

CONTENT

The bill would amend the sentencing guidelines provisions of the Code of Criminal Procedure to create offense variable 20 (terrorism), require it to be scored for all crime categories, and revise the application of several other offense variables.

Offense Variable 20: Terrorism

The Code identifies 19 offense variables and includes instructions for the sentencing judge to score the variables, depending on the category of the crime for which a defendant has been convicted and certain circumstances surrounding the violation. (The offense variables and crime categories are described in **BACKGROUND**, below.)

Under the bill, offense variable 20 would be terrorism. In determining a minimum sentence range under the guidelines for an offense for which this variable would have to be scored, the court would have to determine which of the following applied and assign the number of points attributable to the one with the highest number of points:

- The offender committed an "act of terrorism" by using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device (100 points).
- The offender committed an act of terrorism without using or threatening to use a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device (50 points).
- The offender did not commit an act of terrorism (0 points).

In addition to the offense variables that presently must be scored, offense variable 20 would have to be scored for all crime categories.

"Act of terrorism" would mean that term as it would be defined by Senate Bill 930 (i.e., an act that would be a violent felony under Michigan law, regardless of whether it was committed in Michigan, that was dangerous to human life and intended to intimidate or coerce a civilian population or influence or affect the conduct of a government or a unit of government through intimidation or coercion).

"Harmful biological substance", "harmful biological device", "harmful chemical substance", "harmful chemical device", "harmful radioactive material", and "harmful radioactive device" would mean those terms as defined in Chapter 33 of the Michigan Penal Code, which applies to crimes involving explosives, bombs, and harmful devices (MCL 750.200h).

"Incendiary device" would include gasoline or any other flammable substance, a blowtorch, fire bomb, Molotov cocktail, or other similar device.

Offense Variables

The bill would revise the scoring and/or description of offense variables 1, 3, 5, 7, and 19.

Offense Variable 1. The Code requires that the court score offense variable 1 (aggravated use of a weapon) by determining which of the following apply and assigning the number of points attributable to the one that has the highest number of points:

- A firearm was discharged at or toward a human being or a victim was cut or stabbed with a knife or other cutting or stabbing weapon (25 points).
- A firearm was pointed at or toward a victim or the victim had a reasonable apprehension of an immediate battery when threatened with a knife or other cutting or stabbing weapon (15 points).
- The victim was touched by any other type of weapon (10 points).
- A weapon was displayed or implied (5 points).
- No aggravated use of a weapon occurred (0 points).

The bill would add the following to that list:

- The victim was subjected or exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, harmful radioactive device, incendiary device, or explosive device (20 points).

Offense Variable 3. The bill would require that, for the scoring of offense variable 3 (physical injury to a victim), each person who was placed in danger of injury or loss of life be counted as a victim.

Offense Variable 5. Offense variable 5 is psychological injury to a member of a victim's family. The Code requires that the court score offense variable 5 by determining which of the following applies and assigning the number of points attributable to the one that has the highest number of points:

- Serious psychological injury requiring professional treatment occurred to a victim's family (15 points).
- No serious psychological injury requiring professional treatment occurred to a victim's family (0 points).

Under the bill, if serious psychological injury requiring professional treatment occurred to a victim's family, and the offense were homicide, attempted homicide, conspiracy or solicitation to commit homicide, or assault with intent to commit murder, the sentencing court would have to score 15 points. If serious psychological injury requiring professional treatment occurred to a victim's family as a result of any other offense, the court would have to score 5 points. The bill also would require that offense variable 5 be scored for all crimes against a person. Currently, this variable is scored only for homicide, attempted homicide, or assault within intent to commit murder.

Offense Variable 7. The Code requires that the court score offense variable 7 (aggravated physical abuse) by determining which of the following applies and assigning the number of points attributable to the one that has the highest number of points:

- A victim was treated with terrorism, sadism, torture, or excessive brutality (50 points).

-- No victim was treated with terrorism, sadism, torture, or excessive brutality (0 points).

The bill would remove terrorism from each of the scoring conditions under offense variable 7 and would add to those scoring conditions conduct designed to increase substantially the fear and anxiety a victim suffered during the offense.

The bill also would require that, for the scoring of offense variable 7, each person who was placed in danger of injury or loss of life be counted as a victim.

Offense Variable 19. Offense variable 19 is a threat to the security of a penal institution or court or interference with the administration of justice. The bill would add to that description interference with the rendering of emergency services. The Code requires the court to score offense variable 19 by determining which of the following apply and assigning the number of points attributable to the one that has the highest number of points:

- The offender, by his or her conduct, threatened the security of a penal institution or court (25 points).
- The offender used force or the threat of force against another person or the property of another person to interfere with, attempt to interfere with, or that results in the interference with the administration of justice or the rendering of emergency services (15 points).
- The offender otherwise interfered with or attempted to interfere with the administration of justice (10 points).
- The offender did not threaten the security of a penal institution or court or interfere with or attempt to interfere with the administration of justice (0 points).

The bill would add to the last two scoring conditions interference with the rendering of emergency services.

BACKGROUND

The current offense variables are as follows:

- Offense variable 1: Aggravated use of a weapon.
- Offense variable 2: Lethal potential of the weapon possessed.
- Offense variable 3: Physical injury to a victim.
- Offense variable 4: Psychological injury to a victim.
- Offense variable 5: Psychological injury to a member of a victim's family.
- Offense variable 6: The offender's intent to kill or injure another individual.
- Offense variable 7: Aggravated physical abuse.
- Offense variable 8: Victim asportation or captivity.
- Offense variable 9: Number of victims.
- Offense variable 10: Exploitation of a vulnerable victim.
- Offense variable 11: Criminal sexual penetration.
- Offense variable 12: Contemporaneous felonious criminal acts.
- Offense variable 13: Continuing pattern of criminal behavior.
- Offense variable 14: The offender's role.
- Offense variable 15: Aggravated controlled substance offenses.
- Offense variable 16: Property obtained, damaged, lost, or destroyed.
- Offense variable 17: Degree of negligence exhibited.
- Offense variable 18: Operator ability affected by alcohol or drugs.
- Offense variable 19: Threat to the security of a penal institution or court or interference with the administration of justice.

The crime categories are as follows:

- Crimes against a person.
- Crimes against property.
- Crimes involving a controlled substance.
- Crimes against public order.
- Crimes against public trust.
- Crimes against public safety.

MCL 777.22 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 946 would have an indeterminate impact on State government. To the extent that it would add possible offense variable points, which help to determine the minimum sentence range that an offender may receive, the bill could potentially increase average sentence lengths. In the absence of data, if one assumes that 10 offenders per year each would receive a sentence with an average of five additional months due to the changes in offense variable scoring, the bill would cost the State \$104,000, given that the average annual cost of incarceration is \$25,000.

Fiscal Analyst: B. Wicksall

S0102\s946sa

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.