

HOUSE BILL No. 5520

December 12, 2001, Introduced by Reps. Bovin, Koetje, Toy, Julian, Bishop, Caul, Mead, Van Woerkom, Gosselin, Gilbert, Faunce, Meyer, Hummel, Drolet, Birkholz, Newell, Voorhees, Tabor, Rocca, Neumann, Bernero, Middaugh, George, Bisbee, Shackleton, McConico, Richardville, Lockwood, Ruth Johnson, Schauer, Ehardt, Kowall, Jelinek, Jacobs, Allen, Pestka, Basham, Sheltroun, DeVuyst, Callahan, Rivet, Hager, Shulman, Kuipers, Zelenko, Lipsey, Raczkowski, Phillips, Frank, Pappageorge, Whitmer and Cassis and referred to the Committee on Criminal Justice.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 22, 31, 33, 35, 37, and 49 of chapter XVII
(MCL 777.22, 777.31, 777.33, 777.35, 777.37, and 777.49), sec-
tions 22, 33, and 35 as amended by 2000 PA 279, sections 31 and
49 as amended by 2001 PA 136, and section 37 as added by 1998
PA 317, and by adding section 49a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER XVII
2 Sec. 22. (1) For all crimes against a person, score offense
3 variables 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, ~~and~~ 19,
4 AND 20. Score offense ~~variables 5 and~~ VARIABLE 6 for homicide,
5 attempted homicide, CONSPIRACY OR SOLICITATION TO COMMIT A
6 HOMICIDE, or assault with intent to commit murder. Score offense
7 variable 16 under this subsection for a violation or attempted

1 violation of section 110a of the Michigan penal code, 1931
 2 PA 328, MCL 750.110a. Score offense variables 17 and 18 if an
 3 element of the offense or attempted offense involves the opera-
 4 tion of a vehicle, vessel, ORV, snowmobile, aircraft, or
 5 locomotive.

6 (2) For all crimes against property, score offense variables
 7 1, 2, 3, 4, 9, 10, 12, 13, 14, 16, ~~and~~ 19, AND 20.

8 (3) For all crimes involving a controlled substance, score
 9 offense variables 1, 2, 3, 12, 13, 14, 15, ~~and~~ 19, AND 20.

10 (4) For all crimes against public order and all crimes
 11 against public trust, score offense variables 1, 3, 4, 9, 10, 12,
 12 13, 14, 16, ~~and~~ 19, AND 20.

13 (5) For all crimes against public safety, score offense
 14 variables 1, 3, 4, 9, 10, 12, 13, 14, 16, ~~and~~ 19, AND 20.
 15 Score offense variable 18 if an element of the offense or
 16 attempted offense involves the operation of a vehicle, vessel,
 17 ORV, snowmobile, aircraft, or locomotive.

18 Sec. 31. (1) Offense variable 1 is aggravated use of a
 19 weapon. Score offense variable 1 by determining which of the
 20 following apply and by assigning the number of points attribut-
 21 able to the one that has the highest number of points:

22 (a) A firearm was discharged at or toward a human
 23 being or a victim was cut or stabbed with a knife or
 24 other cutting or stabbing weapon..... 25 points

25 (B) THE VICTIM WAS SUBJECTED OR EXPOSED TO A HARMFUL
 26 BIOLOGICAL SUBSTANCE, HARMFUL BIOLOGICAL DEVICE,
 27 HARMFUL CHEMICAL SUBSTANCE, HARMFUL CHEMICAL DEVICE,

1 HARMFUL RADIOACTIVE MATERIAL, HARMFUL RADIOACTIVE
2 DEVICE, INCENDIARY DEVICE, OR EXPLOSIVE DEVICE..... 20 POINTS
3 (C) ~~-(b)-~~ A firearm was pointed at or toward a
4 victim or the victim had a reasonable apprehension of
5 an immediate battery when threatened with a knife or
6 other cutting or stabbing weapon..... 15 points
7 (D) ~~-(c)-~~ The victim was touched by any other type
8 of weapon..... 10 points
9 (E) ~~-(d)-~~ A weapon was displayed or implied..... 5 points
10 (F) ~~-(e)-~~ No aggravated use of a weapon occurred.... 0 points
11 (2) All of the following apply to scoring offense variable
12 1:
13 (a) Count each person who was placed in danger of injury or
14 loss of life as a victim.
15 (b) In multiple offender cases, if 1 offender is assessed
16 points for the presence or use of a weapon, all offenders shall
17 be assessed the same number of points.
18 (c) Score 5 points if an offender used an object to suggest
19 the presence of a weapon.
20 (d) Score 5 points if ~~the~~ AN offender used a chemical
21 irritant, chemical irritant device, smoke device, or imitation
22 harmful substance or device.
23 (e) Do not score 5 points if the conviction offense is a
24 violation of section 82 or 529 of the Michigan penal code, 1931
25 PA 328, MCL 750.82 and 750.529.
26 (3) As used in this section: ~~-, "chemical"~~

1 (A) "CHEMICAL irritant", "chemical irritant device",
 2 "HARMFUL BIOLOGICAL SUBSTANCE", "HARMFUL BIOLOGICAL DEVICE",
 3 "HARMFUL CHEMICAL SUBSTANCE", "HARMFUL CHEMICAL DEVICE", "HARMFUL
 4 RADIOACTIVE MATERIAL", "HARMFUL RADIOACTIVE DEVICE", and
 5 "imitation harmful substance or device" mean those terms as
 6 defined in section 200h of the Michigan penal code, 1931 PA 328,
 7 MCL 750.200h.

8 (B) "INCENDIARY DEVICE" INCLUDES GASOLINE OR ANY OTHER FLAM-
 9 MABLE SUBSTANCE, A BLOWTORCH, FIRE BOMB, MOLOTOV COCKTAIL, OR
 10 OTHER SIMILAR DEVICE.

11 Sec. 33. (1) Offense variable 3 is physical injury to a
 12 victim. Score offense variable 3 by determining which of the
 13 following apply and by assigning the number of points attribut-
 14 able to the one that has the highest number of points:

15 (a) A victim was killed..... 100 points
 16 (b) A victim was killed..... 35 points
 17 (c) Life threatening or permanent incapacitating
 18 injury occurred to a victim..... 25 points
 19 (d) Bodily injury requiring medical treatment
 20 occurred to a victim..... 10 points
 21 (e) Bodily injury not requiring medical treatment
 22 occurred to a victim..... 5 points
 23 (f) No physical injury occurred to a victim..... 0 points

24 (2) All of the following apply to scoring offense variable
 25 3:

1 (a) In multiple offender cases, if 1 offender is assessed
 2 points for death or physical injury, all offenders shall be
 3 assessed the same number of points.

4 (b) Score 100 points if death results from the commission of
 5 a crime and homicide is not the sentencing offense.

6 (c) Score 35 points if death results from the commission of
 7 a crime and the elements of the offense or attempted offense
 8 involve the operation of a vehicle, vessel, ORV, snowmobile, air-
 9 craft, or locomotive under the influence or while impaired caus-
 10 ing death.

11 (d) Do not score 5 points if bodily injury is an element of
 12 the sentencing offense.

13 (E) COUNT EACH PERSON WHO WAS PLACED IN DANGER OF INJURY OR
 14 LOSS OF LIFE AS A VICTIM.

15 (3) As used in this section, "requiring medical treatment"
 16 refers to the necessity for treatment and not the victim's suc-
 17 cess in obtaining treatment.

18 Sec. 35. (1) Offense variable 5 is psychological injury to
 19 a member of a victim's family. Score offense variable 5 by
 20 determining which of the following apply and by assigning the
 21 number of points attributable to the one that has the highest
 22 number of points:

23 (a) Serious psychological injury requiring profes-
 24 sional treatment occurred to a victim's family AND THE
 25 SENTENCING OFFENSE IS HOMICIDE, ATTEMPTED HOMICIDE,
 26 CONSPIRACY OR SOLICITATION TO COMMIT A HOMICIDE, OR
 27 ASSAULT WITH INTENT TO COMMIT MURDER..... 15 points

1 (B) SERIOUS PSYCHOLOGICAL INJURY REQUIRING
 2 PROFESSIONAL TREATMENT OCCURRED TO A VICTIM'S FAMILY.. 5 POINTS

3 (C) ~~(b)~~ No serious psychological injury requiring
 4 professional treatment occurred to a victim's family.. 0 points

5 (2) Score ~~15~~ points if the serious psychological
 6 injury to the victim's family may require professional
 7 treatment. In making this determination, the fact
 8 that treatment has not been sought is not conclusive.

9 Sec. 37. (1) Offense variable 7 is aggravated physical
 10 abuse. Score offense variable 7 by determining which of the fol-
 11 lowing apply and by assigning the number of points attributable
 12 to the one that has the highest number of points:

13 (a) A victim was treated with ~~terrorism,~~
 14 sadism, torture, or excessive brutality OR CONDUCT
 15 DESIGNED TO SUBSTANTIALLY INCREASE THE FEAR AND ANXI-
 16 ETY A VICTIM SUFFERED DURING THE OFFENSE..... 50 points

17 (b) No victim was treated with ~~terrorism,~~
 18 sadism, torture, or excessive brutality OR CONDUCT
 19 DESIGNED TO SUBSTANTIALLY INCREASE THE FEAR AND ANXI-
 20 ETY A VICTIM SUFFERED DURING THE OFFENSE..... 0 points

21 (2) COUNT EACH PERSON WHO WAS PLACED IN DANGER OF INJURY OR
 22 LOSS OF LIFE AS A VICTIM.

23 (3) ~~(2)~~ As used in this section, ~~—~~

24 ~~—(a)—"Terrorism" means conduct designed to substantially~~
 25 ~~increase the fear and anxiety a victim suffers during the~~
 26 ~~offense.~~

1 ~~(b) "Sadism"~~ "SADISM" means conduct that subjects a victim
 2 to extreme or prolonged pain or humiliation and is inflicted to
 3 produce suffering or for the offender's gratification.

4 Sec. 49. Offense variable 19 is threat to the security of a
 5 penal institution or court or interference with the administra-
 6 tion of justice OR THE RENDERING OF EMERGENCY SERVICES. Score
 7 offense variable 19 by determining which of the following apply
 8 and by assigning the number of points attributable to the one
 9 that has the highest number of points:

10 (a) The offender by his or her conduct threatened
 11 the security of a penal institution or court..... 25 points

12 (b) The offender used force or the threat of force
 13 against another person or the property of another
 14 person to interfere with, attempt to interfere with,
 15 or that results in the interference with the adminis-
 16 tration of justice or the rendering of emergency
 17 services..... 15 points

18 (c) The offender otherwise interfered with or
 19 attempted to interfere with the administration of jus-
 20 tice OR THE RENDERING OF EMERGENCY SERVICES..... 10 points

21 (d) The offender did not threaten the security of a
 22 penal institution or court or interfere with or
 23 attempt to interfere with the administration of jus-
 24 tice OR THE RENDERING OF EMERGENCY SERVICES..... 0 points

25 SEC. 49A. (1) OFFENSE VARIABLE 20 IS TERRORISM. SCORE
 26 OFFENSE VARIABLE 20 BY DETERMINING WHICH OF THE FOLLOWING APPLIES

1 AND BY ASSIGNING THE NUMBER OF POINTS ATTRIBUTABLE TO THE ONE
 2 THAT HAS THE HIGHEST NUMBER OF POINTS:

3 (A) THE OFFENDER COMMITTED AN ACT OF TERRORISM BY
 4 USING OR THREATENING TO USE A HARMFUL BIOLOGICAL SUB-
 5 STANCE, HARMFUL BIOLOGICAL DEVICE, HARMFUL CHEMICAL
 6 SUBSTANCE, HARMFUL CHEMICAL DEVICE, HARMFUL RADIOAC-
 7 TIVE MATERIAL, HARMFUL RADIOACTIVE DEVICE, INCENDIARY
 8 DEVICE, OR EXPLOSIVE DEVICE..... 100 POINTS

9 (B) THE OFFENDER COMMITTED AN ACT OF TERRORISM WITH-
 10 OUT USING OR THREATENING TO USE A HARMFUL BIOLOGICAL
 11 SUBSTANCE, HARMFUL BIOLOGICAL DEVICE, HARMFUL CHEMICAL
 12 SUBSTANCE, HARMFUL CHEMICAL DEVICE, HARMFUL RADIOAC-
 13 TIVE MATERIAL, HARMFUL RADIOACTIVE DEVICE, INCENDIARY
 14 DEVICE, OR EXPLOSIVE DEVICE..... 50 POINTS

15 (C) THE OFFENDER DID NOT COMMIT AN ACT OF TERRORISM. 0 POINTS

16 (2) AS USED IN THIS SECTION:

17 (A) "ACT OF TERRORISM" MEANS THAT TERM AS DEFINED IN SECTION
 18 543B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.543B.

19 (B) "HARMFUL BIOLOGICAL SUBSTANCE", "HARMFUL BIOLOGICAL
 20 DEVICE", "HARMFUL CHEMICAL SUBSTANCE", "HARMFUL CHEMICAL DEVICE",
 21 "HARMFUL RADIOACTIVE MATERIAL", AND "HARMFUL RADIOACTIVE DEVICE"
 22 MEAN THOSE TERMS AS DEFINED IN SECTION 200H OF THE MICHIGAN PENAL
 23 CODE, 1931 PA 328, MCL 750.200H.

24 (C) "INCENDIARY DEVICE" INCLUDES GASOLINE OR ANY OTHER FLAM-
 25 MABLE SUBSTANCE, A BLOWTORCH, FIRE BOMB, MOLOTOV COCKTAIL, OR
 26 OTHER SIMILAR DEVICE.