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REVISE CERTAIN ROBBERY STATUTES

House Bill 5105 with committee amendment First Analysis (2-12-04)

Sponsor: Rep. William Van Regenmorter
Committee: Criminal Justice

THE APPARENT PROBLEM:

Robbery is the crime of taking something from someone else, or in their presence, by force or violence. Michigan's robbery statutes date back to 1838 when the common law view of the time was codified. Over the past two decades, however, some state appellate courts have taken a "transactional approach" when interpreting the robbery statutes, which looks at the crime from the point in time of the taking to the point in time that the suspect escapes to temporary safety, and thus have included as crimes of robbery incidents in which violence or force were not used in the taking of property, but in retaining possession of that stolen property or in making an escape. Recently, the Michigan Supreme Court overruled the appellate cases that used the "transactional approach" and held that the statute must be read more narrowly as only applying to those acts in which the use of force was used to accomplish the taking; force used later to retain stolen property was not included. [*People v Randolph*, 466 Mich 532 (2002)]

The problem lies with how crimes often play out. A perpetrator may not use force or violence to take property, but may use force or violence to get free from apprehension or to fight off someone who may be trying to take the stolen property from him or her. The force or violence may or may not be accomplished by brandishing or using a dangerous weapon. In such situations, under the *Randolph* decision, a prosecutor could not charge the offender with armed or unarmed robbery, but with a lesser offense, such as larceny, and maybe could add a charge of assault and battery or aggravated assault. Armed robbery, however, carries a penalty of imprisonment for any term of years up to life in prison; a larceny charge, even with an added charge of aggravated assault, would not allow for life imprisonment.

Some states have revised their robbery statutes to adopt what is known as a "continuous offense"

approach. Under this approach, the crime is viewed as one continuous action from the moment that the property is taken to the moment when the suspect escapes or is apprehended. A crime therefore is raised to the level of robbery if force or violence is used to retain possession of the stolen property or to escape apprehension even if force was not used initially to take the property. Since the *Randolph* decision interpreted the statute so narrowly, the only way to broaden the scope is to do so legislatively. Prosecutors have requested that the legislature revise Michigan's robbery statutes more along the lines of the "continuous offense" approach.

THE CONTENT OF THE BILL:

The bill would revise provisions of the Michigan Penal Code pertaining to armed robbery, carjacking, and unarmed robbery. Many of the changes would be editorial in nature and the penalties for the three crimes would not be affected. However, the crime of armed robbery would be expanded to include a person who, in the course of engaging in the proscribed conduct, represented orally or otherwise that he or she was in possession of a dangerous weapon.

Carjacking, which is the use of force or violence, or the threat to use force or violence, to rob, steal, or take a motor vehicle from another person in that person's presence, would be revised to apply to a person who, in the course of committing a larceny of a motor vehicle, put in fear any operator, passenger, or person in lawful possession of the motor vehicle, or any person lawfully attempting to recover the motor vehicle. (The new language is underlined.) The bill would define "in the course of committing a larceny of a motor vehicle" as including acts that occurred in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny,

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or in an attempt to retain possession of the motor vehicle.

Currently, unarmed robbery is the act of using force and violence, assault, or fear (but without a dangerous weapon) to feloniously rob, steal and take from that person, or in his or her person, any money or other property which may be the subject of larceny. The provision would be revised to apply to a person who, in the course of committing a larceny of any money or other property that may be the subject of larceny, used force or violence against any person who was present, or who assaulted or put the person in fear. The bill would define “in the course of committing a larceny” as including acts that occurred in an attempt to commit the larceny, or during commission of the larceny, or in flight or attempted flight after the commission of the larceny, or in an attempt to retain possession of the property. The bill would take effect July 1, 2004.

MCL 750.529, 750.529a, and 750.530

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the fiscal impact of the bill would depend on how it affected the numbers of convictions obtained for robbery and carjacking. Armed robbery and carjacking are Class A offenses punishable by life or any term of years, while unarmed robbery is a Class C offense punishable by imprisonment for up to 15 years. In addition, armed robbery that includes an aggravated assault carries a mandatory minimum of two years, and a carjacking sentence is to run consecutively to any other sentence imposed for a conviction arising out of the same transaction.

Under the sentencing guidelines, recommended minimum sentence ranges for Class A offenses vary from 21-35 months to 270-450 months or life; prison is recommended for all of these sentences. Recommended minimum sentence ranges for Class C offenses vary from 0-11 months (for which local sanctions are required) to 62-114 months (for which a prison term is mandated). Thus, under the bill, state correctional costs deriving from convictions of armed robbery, unarmed robbery, and carjacking could increase, and local costs connected to convictions for unarmed robbery could increase. (2-3-04)

ARGUMENTS:

For:

Currently, a charge of robbery can only be made if force or violence were used to commit the larceny. Revising the statutes will allow prosecutors more latitude to prosecute similar crimes in similar ways. For example, under the recent court interpretation of the robbery laws, it would be a crime of armed robbery if a gun were brandished immediately before or while property was being taken. However, it would not be a crime of armed robbery if the gun was not brandished until the suspect was trying to evade capture by a security guard or passerby. The bill would revise the state’s robbery statutes to include any crime of larceny that involved the use of force or violence, or fear, at any time during the commission of the crime. Therefore, if force or violence were used to take property, to retain property, or to evade apprehension after taking property, the act could constitute robbery. This would also apply to carjacking. Since armed and unarmed robbery convictions would result in stiffer sentences, prosecutors and judges would be given an important tool with which to protect the public and more appropriately punish wrongdoers.

For:

Before the 2002 state supreme court decision interpreted the robbery statutes as applying only in those cases in which force or violence were used in the taking of property, the state’s appellate courts were moving towards what is known as the “transactional approach”. Under the transactional approach, the crime was looked at as commencing at the point in time that the taking occurred and ending at the point in time when the suspect reached temporary safety. Even though this approach included as robbery some acts that would not be considered robbery under the *Randolph* decision, it still is problematic. For example, say property is taken from a convenience store without force, but force is used to keep possession of the stolen property or in an attempt to flee from a security guard or police officer. Under the transactional approach, the crime would be elevated to robbery if the suspect escaped apprehension and attained temporary safety but would not be robbery if the suspect were apprehended by the security guard or police officer because that means he or she had never attained temporary safety. Moreover, the current law reflects the mindset of the early 1830s, whereas the bill is similar to revisions other states have made that include not only the actual taking or larceny as the crime of robbery, but also those acts committed in

trying to keep possession of the property and acts committed in trying to escape apprehension. Unless the armed and unarmed robbery and carjacking statutes are revised legislatively, the *Randolph* decision will hold precedence and prosecutors will lose an important tool in appropriately charging potentially dangerous criminals.

Against:

The *Randolph* court interpreted the robbery statutes based on a strict reading of the current language and the common law view of robbery at the time the law was codified in the late 1830s. It could be argued that the law has served many prosecutors and protected the public well for a very long time. The required element of using force or violence to accomplish the taking is there for a reason, and so distinguishes this crime from general larceny crimes such as shoplifting or stealing from a home when no one is there. To broaden the scope of what constitutes robbery could blur this distinction. It is conceivable, therefore, that a person who shoplifts a candy bar from a convenience store, but then panics and punches or slaps the store owner who chases him or her in an attempt to flee, could face a felony robbery charge with its longer incarceration penalties rather than a misdemeanor larceny offense. If he or she brandished a gun or a knife to scare the store owner into releasing him or her, even if no harm were done to the store owner, he or she could face up to life in prison for armed robbery.

Yet, even without the bill, if someone is harmed or threatened with harm by a suspect trying to escape or trying to keep possession of the stolen goods, prosecutors can add other charges such as aggravated assault, felony assault, and others as fit the particulars of a case. Therefore, the bill really is not needed, as prosecutors already have the tools needed to appropriately prosecute crimes on a case by case basis. It is true that some multiple charges result in the sentences being served concurrently, and that the bill could result in prosecutors putting some people away longer, but it seems that the distinction between the crime of robbery and other larceny crimes shouldn't be dissolved.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (2-4-04)

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■ 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.