



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

BILL ANALYSIS



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

Senate Bills 1287 and 1288 (as enrolled)
Sponsor: Senator Jud Gilbert, II (S.B. 1287)
Senator Gerald Van Woerkom (S.B. 1288)
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACTS 523 & 524 of 2004

Date Completed: 1-27-05

RATIONALE

Chapter 33 (Explosives, Bombs, and Harmful Devices) of the Michigan Penal Code prohibits manufacturing, buying, selling, furnishing, or possessing any device that is designed to explode or that will explode on impact or with the application of heat or a flame or that is highly incendiary. That prohibition would seem to cover activities involving a makeshift incendiary device, such as a Molotov cocktail (which consists of a breakable container full of flammable liquid and equipped with a rag or other wick). A violation occurs, however, only if the offender acts with intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill a person or with intent to damage or destroy real or personal property without the owner's permission or, if public property, without the permission of the governmental agency having authority over that property. Reportedly, it has been difficult to prosecute some cases involving Molotov cocktails and similar devices because of the need to prove the offender's intent. Some people believe that manufacturing, buying, selling, furnishing, or possessing a Molotov cocktail should be a separate offense, without an element of intent.

CONTENT

Senate Bill 1287 amends Chapter 33 of the Michigan Penal Code to prohibit a person from manufacturing, buying, selling, furnishing, or possessing a Molotov cocktail or any similar device. A violation is a felony punishable by up to four years' imprisonment and/or a maximum fine of \$2,000.

The bill defines "Molotov cocktail" as an improvised incendiary device that is constructed from a bottle or other container filled with a flammable or combustible material or substance that has a wick, fuse, or other device designed or intended to ignite the contents when the device is thrown or placed near a target.

Senate Bill 1288 amends the Code of Criminal Procedure to include a violation of Senate Bill 1287 in the sentencing guidelines. The offense is a Class F felony against the public safety, with a statutory maximum sentence of four years' imprisonment. The bill was tie-barred to Senate Bill 1287.

The bills will take effect on April 1, 2005.

MCL 750.211a (S.B. 1287)
777.16k (S.B. 1288)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Under Chapter 33, manufacturing, buying, selling, furnishing, or possessing certain explosive or incendiary devices is punishable by up to 15 years' imprisonment and/or a maximum fine of \$10,000, and the penalty increases depending on whether the violation causes property damage, physical injury, serious impairment, or death. While the penalty is severe, prosecutors apparently have found it difficult to prove

the element of intent when someone is found in possession of or manufacturing a Molotov cocktail or similar device, without having used the device or laid out plans to destroy something or injure someone with it. These devices are highly unstable, making them very dangerous regardless of whether anyone ever intends to use them to damage property or inflict injury or death. By establishing a new penalty of up to four years' imprisonment and/or a maximum fine of \$2,000, the bills will ensure that people caught with Molotov cocktails or other makeshift explosives will be penalized. The bill also may serve as a deterrent against making and possessing such devices.

Also, by referring to Molotov cocktails and similar devices and defining "Molotov cocktail", the bills will not implicate farmers for their use of fertilizers, which may become explosive or combustible when combined with other substances.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of the new offense. A class F felony has a minimum sentencing guidelines recommended sentence range of 0-3 months to 17-30 months. Local units incur the costs of intermediate sanctions and incarceration in a local facility, both of which vary by county. The State incurs the cost of felony probation at an average annual cost of \$1,800, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. For each offender who is convicted, sentenced to prison, and given the longest allowable minimum sentence, it will cost the State \$70,000. Public libraries will benefit from any additional penal fine raised.

Fiscal Analyst: Bethany Wicksall

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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.