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BILL ANALYSIS

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House Bill 5336 (Substitute H-1 as passed by the House)
House Bill 5347 (Substitute H-1 as passed by the House)
Sponsor: Representative John Stakoe (H.B. 5336)
Representative Mike Nofs (H.B. 5347)
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 5-7-04

CONTENT

House Bill 5336 (H-1) would amend the Code of Criminal Procedure to include in the sentencing guidelines felony offenses proposed by House Bill 5347 (H-1).

House Bill 5347 (H-1) would amend the Michigan Penal Code to prohibit and provide criminal penalties for knowingly operating an "audiovisual recording function" of a device in a facility where a motion picture was being exhibited, without the consent of the facility's owner or lessee and of the motion picture's licensor. ("Audiovisual recording function" would mean the capability of a device to record or transmit a motion picture or any part of a motion picture by technological means.)

House Bill 5336 (H-1) is tie-barred to House Bill 5347. Both bills would take effect on June 1, 2004.

House Bill 5336 (H-1)

Under the bill, felony offenses under House Bill 5347 (H-1) would be included in the sentencing guidelines as shown in Table 1.

Table 1

Violation	Felony Level	Statutory Maximum
Operating audiovisual recording device in a motion picture facility – 2 nd offense.	G-Property	2 years
Operating audiovisual recording device in a motion picture facility – 3 rd or subsequent offense.	F-Property	4 years

House Bill 5347 (H-1)

Under the bill, knowingly operating a device's audiovisual recording function in a facility where a motion picture was being exhibited, without the consent of the facility's owner or lessee and of the motion picture's licensor, would be punishable as shown in Table 2.

Table 2

Violation	Level	Maximum Imprisonment	Maximum Fine
1 st Offense	Misdemeanor	1 year	\$10,000
2 nd Offense	Felony	2 years	\$20,000
3 rd or Subsequent Offense	Felony	4 years	\$40,000

The bill would not apply to a person who operated a device's audiovisual recording function in a retail establishment solely to demonstrate the use of the device for sales purposes.

The owner or lessee of a facility where a motion picture was exhibited, the owner's or lessee's authorized agent or employee, the motion picture's licensor, or the licensor's agent or employee who alerted a law enforcement agency of an alleged violation of the bill, would not be liable in any civil action arising out of measures taken by him or her in the course of detaining a person whom he or she believed in good faith to have violated the bill while awaiting the arrival of law enforcement authorities. This immunity would not apply, however, if the plaintiff showed by clear and convincing evidence that the measures were manifestly unreasonable and/or the period of detention was unreasonably long.

The bill states that it would not prevent any lawfully authorized investigative, law enforcement, protective, or intelligence-gathering State or Federal agent or employee from operating a device's audiovisual recording function in a facility where a motion picture was being exhibited, as part of an investigative, protective, law enforcement, or intelligence-gathering activity.

The bill specifies that it would not prohibit a person from being charged with, convicted of, or punished for any other violation of law that proscribed conduct described in the bill and that provided a greater penalty.

"Audiovisual recording function" would mean the capability of a device to record or transmit a motion picture or any part of a motion picture by technological means.

MCL 777.16w (H.B. 5336)
Proposed MCL 750.465a (H.B. 5347)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many offenders would be convicted of the proposed misdemeanor and felony offenses. The Class G felony would have a sentencing guidelines recommended minimum sentence range of 0-3 months to 7-16 months, while the Class F felony would have a sentencing guidelines recommended minimum sentence range of 0-3 months to 17-30 months. It is probable that most offenders would receive local sanctions for either felony unless they had extensive prior records. Local units incur the costs of misdemeanor probation, intermediate sanctions, and incarceration in a local facility, 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 \$28,000. Public libraries would benefit from any additional revenue available due to new penal fines.

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.