

Legislative Analysis



INDECENT EXPOSURE WHILE ENGAGING IN CERTAIN ACTS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4597 as enrolled
Public Act 300 of 2005
Sponsor: Rep. Leslie Mortimer

House Bill 4598 as enrolled
Public Act 301 of 2005
Sponsor: Rep. Rick Jones

House Bill 4599 as enrolled
Public Act 302 of 2005
Sponsor: Rep. Kevin Elsenheimer

House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (8-16-06)

BRIEF SUMMARY: The legislation would create an enhanced criminal penalty for engaging in certain lewd acts while being indecently exposed.

FISCAL IMPACT: The impact would range from no direct fiscal impact (House Bill 4599) to an indeterminate impact (House Bill 4597).

THE APPARENT PROBLEM:

A recent situation in Jackson County revealed an inadequacy in current law that some people believe needs to be addressed. According to committee testimony, the situation involved a man who repeatedly engaged in lewd acts while exposing himself to his next door neighbor and her young daughter. Reportedly, he even cut down trees on his property so that he could be seen more clearly by the neighbors. When a bush on the neighbor's property obscured their view of him, he climbed up on a ladder so he would be in plain view. In addition, complaints have been made regarding drivers and passengers in moving vehicles also engaging in acts not suitable for public highways.

The penal code currently prohibits indecent exposure, but does not distinguish between acts of simple exposure and acts involving masturbation and other acts considered to be lewd or indecent. Indecent exposure is a misdemeanor punishable by up to one year in jail or a fine, and three convictions can result in being listed on the state sex offenders registry. However, sexual crimes are repetitive behaviors, meaning that a person often commits the same crime more than once, and some offenders progress to more serious sexual crimes. Some feel, therefore, that a person who engages in indecent exposure while also engaging in other lewd acts should face more severe criminal penalties.

THE CONTENT OF THE BILLS:

Together the bills would amend various acts to create a two-year misdemeanor offense for being indecently exposed while engaging in certain acts, require repeat offenders to register on the sex offenders registry, and include the crime of aggravated indecent exposure in the sentencing guidelines. The bills would take effect February 1, 2006. A detailed description of each bill follows:

House Bill 4597 would amend the Michigan Penal Code (MCL 750.335a). Section 335a of the code prohibits a person from knowingly making any open or indecent exposure of his or her person or of the person of another. Indecent exposure is punishable by imprisonment for not more than one year or a fine of not more than \$1,000. The bill would instead allow imprisonment and/or imposition of a fine.

Furthermore, the bill would add Section 335a(2)(b) which would specify that a person who was indecently exposed and fondled his or her genitals, pubic area, buttocks, or breasts (if a female) would be guilty of a misdemeanor punishable by imprisonment for not more than two years, a fine of not more than \$2,000, or both. Lastly, the bill would delete obsolete language pertaining to trying an offense involving a sexually delinquent person only in a court of record.

House Bill 4598 would amend the Sex Offenders Registration Act (MCL 28.722). A person convicted of a listed offense is subject to the act's reporting requirements for inclusion in the sex offenders registry. The bill, which is tie-barred to House Bill 4597, would include as a "listed offense" a violation of Section 335a(2)(b) of the Michigan Penal Code if the person had previously been convicted of violating Section 335a (indecent exposure or indecent exposure with a lewd act).

House Bill 4599 would amend the Code of Criminal Procedure (MCL 777.16q) to specify that aggravated indecent exposure with a lewd act would be a Class G felony against a person with a two-year maximum term of imprisonment. The bill is tie-barred to House Bill 4597.

(Note: Even though indecent exposure while engaging in certain acts would be designated a misdemeanor under House Bill 4597, the Code of Criminal Procedures defines "felony", for purposes of the sentencing guidelines, as including two-year misdemeanors.)

FISCAL INFORMATION:

House Bill 4597 would have an indeterminate fiscal impact on the state and local units of government. Typically, misdemeanor offenses are punishable only by local sanctions, which may include a term in the county jail or misdemeanor probation supervision, which is a local responsibility. However, statute limits a sentence to a county jail to 12 months, so if an offender was sentenced to more than 12 months under the bill, the state could incur costs of prison incarceration, which currently average about \$28,000 per prisoner

annually. Local impact under the bill would depend on how the bill affected the numbers of misdemeanor convictions, jail utilization, and the numbers of offenders under misdemeanor probation supervision. Local libraries would benefit from any increase in penal fines occurring under the bill.

House Bill 4598 would have no significant fiscal impact.

House Bill 4599 would provide for sentencing guidelines in accordance with House Bill 4597 and thus would have no direct fiscal impact.

ARGUMENTS:

For:

Currently, indecent exposure is a one-year misdemeanor or carries a fine up to \$1,000. Under House Bill 4597, the penalty for a person who also masturbated or fondled specified private areas would double. In addition, under House Bill 4598, a person who engaged in indecent exposure with a lewd act would have to register as a sex offender if he or she had previously been convicted of indecent exposure or indecent exposure with a lewd act. Unlike earlier versions, the bills use unambiguous terms to clearly identify the behavior that would trigger these penalties. Supporters of the bills believe the increased penalty will add an important disincentive from engaging in certain acts and give prosecutors the tools necessary to prosecute those who break the law.

Also, since the sentencing guidelines treat two-year misdemeanors as felonies for the purpose of sentencing, habitual offenders could face longer minimum sentences. Moreover, if the behavior reaches the level of a "sexually delinquent person" (a person whose sexual behavior is characterized by repetitive or compulsive acts that show a disregard for consequences or the rights of others), the penalty increases to any term of imprisonment up to life in prison. The bills, therefore, should provide better protection for the public.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ 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.