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BILL ANALYSIS

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Senate Bill 444 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Michelle A. McManus
Committee: Judiciary

Date Completed: 10-3-05

RATIONALE

In Michigan and across the country, there apparently have been numerous incidents of individuals' impersonating police officers. Some of these individuals, for unknown reasons, may want to appear to be police officers but have no intention of harming anyone or perpetrating a further offense. At other times, however, someone will impersonate a law enforcement officer with the intention of committing a crime. The Michigan Penal Code prohibits an individual who is not a peace officer from performing the duties of a peace officer, representing to another that he or she is a peace officer for any unlawful purpose, or representing to another that he or she is a peace officer with the intent to compel the person to do or refrain from doing any act against his or her will. Although these provisions prescribe penalties for someone who actually impersonates an officer, some people believe that Michigan law also should restrict a person's ability to assemble the components of a uniform that could falsely identify him or her as a peace officer.

While the Code generally prohibits a person from selling, furnishing, or possessing the badge or facsimile of the badge of any law enforcement agency, unless certain conditions apply, it has been suggested that the prohibition be expanded to include a law enforcement agency's patch or uniform, or facsimile of a patch or uniform, and that wearing, displaying, or using those items also should be against the law. In addition, some believe that a person who is not a peace officer should be prohibited from wearing or displaying a law enforcement agency's emblem, logo, or other identification for the purpose of leading others to believe that he or she is a peace

officer or represents a law enforcement agency.

CONTENT

The bill would amend the Michigan Penal Code to do all of the following:

- **Expand the prohibition against selling, furnishing, or possessing the badge of a law enforcement agency to include the patch or uniform of a law enforcement agency; extend the prohibition to wearing, exhibiting, displaying, or using a badge, patch, or uniform; and increase the criminal penalty for a violation of that prohibition.**
- **Limit the exceptions that apply to a retirement badge or the badge of a deceased officer, and add an exception for a person engaged in the theatrical profession.**
- **Prohibit a person who was not a peace officer from wearing or displaying the emblem, logo, or other identification of any law enforcement agency, or a facsimile of those items, if the person represented himself or herself to another as being a peace officer, or the wearing or displaying would lead a reasonable person to believe falsely that the law enforcement agency was promoting or endorsing a commercial service or product or a charitable endeavor.**
- **Exclude a bailiff or court officer from the prohibitions.**

Under the bill, "facsimile" would include both an exact replica of an existing item and a close imitation of an existing item.

Selling, Furnishing, or Possessing Badge, Patch, or Uniform

The Code prohibits a person from selling, furnishing, or possessing the badge or facsimile of the badge of any law enforcement agency unless any of the following apply:

- The person receiving or possessing the badge or facsimile is authorized to receive or possess it by the law enforcement agency's chief officer.
- The person receiving or possessing the badge or facsimile is a member of the law enforcement agency.
- The badge is the badge of a deceased law enforcement officer.
- The person receiving or possessing the badge is a collector of badges and the badge is transported in a container or display case.

The bill would include in those provisions a patch or uniform or a facsimile of a patch or uniform of any law enforcement agency, and would extend the prohibition to wearing, exhibiting, displaying, or using a badge, patch, uniform, or facsimile. In the case of the badge, patch, or uniform of a deceased law enforcement officer, the exception would apply only to one that was in the possession of the deceased officer's spouse, child, or next of kin.

The current prohibition also includes an exception for a law enforcement agency badge that is a retirement badge. Under the bill, that exception would apply only if the retirement badge were in the possession of the retired law enforcement officer. The bill also would make an exception to the prohibition for a person in the theatrical profession who wore a badge, patch, uniform, or facsimile while actually engaged in following that profession.

A violation is a misdemeanor punishable by a maximum fine of \$100. Under the bill, the misdemeanor would be punishable by up to 93 days' imprisonment and/or a maximum fine of \$500.

Wearing or Displaying Law Enforcement Identification

The bill would prohibit a person other than a peace officer from wearing or displaying the emblem, insignia, logo, service mark, or

other "law enforcement identification" of any law enforcement agency, or a facsimile of any of those items, if either of the following applied:

- The person represented himself or herself to another person as being a peace officer.
- The wearing or displaying occurred in a manner that would lead a reasonable person to believe falsely that the law enforcement agency whose emblem, insignia, logo, service mark, or other law enforcement identification or facsimile was being worn or displayed was promoting or endorsing a commercial service or product or a charitable endeavor.

A violation would be a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$500, or both.

"Law enforcement identification" would mean any identification that contained the words "law enforcement" or similar words, including "agent", "enforcement agent", "detective", "task force", "fugitive recovery agent", or any other combination of names that gives the impression that the bearer is any way connected with the Federal government, State government, or any political subdivision of a State government.

"Peace officer" would mean that term as defined in Section 215 of the Penal Code, i.e., any of the following:

- A sheriff or deputy sheriff of a county of this State or another state.
- A city, village, or township police officer of this State or another state.
- A city, village, or township marshal.
- A constable.
- A Michigan State Police officer.
- A conservation officer.
- A police officer or public safety officer of a community college, college, or university who is authorized by the governing board of that institution to enforce State law and the rules and ordinances of that institution.
- A park and recreation officer commissioned under the Natural Resources and Environmental Protection Act (NREPA).
- A State forest officer commissioned under NREPA.
- A Federal law enforcement officer.

-- An Attorney General investigator.

The term also includes security personnel employed by the State pursuant to Public Act 59 of 1935, and a motor carrier officer appointed under the Act. (Section 6c of that Act allows the Director of the Department of State Police to authorize limited arrest powers for security personnel employed by the State for the protection of State-owned or -leased property or facilities in Lansing and at the State secondary complex. Section 6d allows the Director to appoint officers with limited arrest powers for the purpose of enforcing the general laws of the State as they pertain to commercial vehicles.)

Bailiffs & Court Officers

Under the bill, the existing and proposed prohibitions would not apply to a person appointed by a Michigan court to serve as a bailiff or court officer under Section 8321 of the Revised Judicature Act (RJA) or Michigan Court Rule (MCR) 3.106 or MCR 2.103.

(Section 8321 of the RJA requires civil process in the district court to be served by a sheriff, deputy sheriff, or a court officer appointed by the court's judges for that purpose. Under MCR 3.106, a court may appoint court officers and may require that property be seized and evictions conducted only by court officers and bailiffs serving that court, sheriffs and deputy sheriffs, or State or local police. Under MCR 2.103, a writ of restitution or process requiring the seizure or attachment of property may be served only by a sheriff or deputy sheriff, a bailiff or court officer appointed by the court for that purpose, or State or local police. The rule also provides that process in civil proceedings requiring the arrest of a person may be served only by a sheriff, deputy sheriff, or police officer, or by a court officer appointed by the court for that purpose.)

MCL 750.216a et al.

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

Although definitive statistics about the frequency of police impersonation are not

available, anecdotal evidence suggests that it has long been a problem and that police impersonation may be on the rise. Perhaps the most notorious example of police impersonation involved the late Ted Bundy, a serial murderer who kidnapped and killed numerous women and girls in several states and eventually was executed in Florida. One victim of an attempted kidnapping identified Bundy as the man who claimed he was a police officer and tried to handcuff her. In Michigan, some have theorized that the so-called Oakland County child killer, who kidnapped and murdered four children in the 1970s, may have impersonated a police officer to gain the children's trust. In more recent years, a Florida man accused of sexual misconduct reportedly passed himself off as a police officer in order to make a presentation to school children; a Macomb County man apparently used a blue flashing light to pull over drivers on the expressway, then assault and rob them; a Pontiac man reportedly posed as a sheriff's deputy in order to defraud area businesses; two men in California claimed they were police officers in order to extort money from immigrants. Most recently, according to the *Lansing State Journal*, two people posing as police officers by wearing star-shaped badges tricked an elderly Lansing-area woman into giving them more than \$9,000 under the ruse of investigating counterfeit money ("Police Imposters Targeting Elderly", 9-29-05).

While the Michigan Penal Code prohibits impersonating a peace officer and provides for felony penalties if the impersonation is done for illicit purposes, restricting the ability to assemble items that suggest a person's law enforcement credentials, such as badges, uniforms, and patches, would help to prevent false representation before it occurred. This, in turn, would protect Michigan citizens from those who would seek to convince others that they are law enforcement officers for criminal purposes, and from those who simply desire to act in the role of law enforcement without having the proper training and authority to do so.

Supporting Argument

Since the September 11, 2001, attacks on the World Trade Center in New York City and the Pentagon in suburban Washington, D.C., combating terrorism has been at the forefront of domestic and foreign policy in the United States. Guarding against police

impersonation has become a homeland security issue in that fight against terrorist activity. According to testimony before the Senate Judiciary Committee by the Oakland County sheriff, a Federally coordinated terrorism task force is focusing on false representation as a police officer as a possible terrorist tactic. Michigan's commercially busy international border, the presence of significant research and manufacturing facilities in the automotive and pharmaceutical industries, and the hosting of major events like the upcoming Super Bowl XL, make the State a potential target of terrorist activity. Ensuring that the peace officers who protect those facilities and work those events are legitimate law enforcement personnel is crucial to safeguarding the public. The Oakland County sheriff pointed out that law enforcement agency uniform patches have been placed for auction on internet websites and that some retail stores even offer for sale replica patches of law enforcement agencies in many states. This easy access to some of the accoutrements of a police uniform could facilitate police impersonation by terrorists. Reining in the trade in authentic or imitation law enforcement badges, uniforms, and patches and restricting the use of law enforcement identifiers like emblems, logos, and insignia would help to protect Michigan's citizens and property from one potential terrorist ploy.

Supporting Argument

Many district courts in Michigan apparently hire court officers and outfit them with uniforms and badges that are similar to those of State Police or Capitol security personnel. Though not commissioned peace officers, court officers must submit to a background check and are appointed by the chief judge in a judicial district. The RJA authorizes court officers to serve civil process, and court rules provide for the appointment of court officers as well as authorize court officers to seize property and conduct evictions, serve a writ of restitution or other process requiring the seizure or attachment of property, and serve process in civil proceedings requiring the arrest of a person. According to one district court judge, court officers also provide courtroom security and their wearing of a uniform and badge provides a calming effect in the courtroom. Exempting a court employee authorized and appointed to serve as a court officer under the RJA or court rules from the

prohibitions would allow court officers appointed by courts to continue using their badges and uniforms.

Response: Other court personnel who are not included in the definition of "peace officer", such as probation officers and juvenile probation officers, also apparently use badges that are similar to police badges. In restricting access to badges and other law enforcement paraphernalia, the legislation should not prevent legitimate uses of badges by court personnel.

In addition, the bill's exception for theatrical performances would be too narrow. It would apply only to the prohibitions pertaining to a badge, patch, or uniform and not to the prohibition regarding an emblem, insignia, logo, service mark, or other law enforcement identification. Also, the theater exception would apply only to professional theater and not to community theater or student productions. Moreover, it appears that the exception would not cover wearing a uniform, badge, or patch as part of a costume, as one might for a masquerade or Halloween party.

Opposing Argument

The legislation's restriction on the use of certain terms, such as "agent" and "fugitive recovery agent" would be too broad. Bail agents or bail bond agents are private contractors hired by courts to track down individuals who fail to appear in court pursuant to the terms of their bail or bond. Under the bill's definition of "law enforcement identification", these agents would be prohibited from identifying themselves as fugitive recovery agents, which is the term commonly used for them. Moreover, under the bill, they could not even use the term "agent" on their identification, although the Penal Code itself refers to these individuals as "bail agents" in a provision exempting them from restrictions on the possession and reasonable use of stun guns (MCL 750.224a). To ensure that statutory provisions pertaining to bail agents remain consistent and that bail agents are allowed to continue to do the work courts hire them to do, the bill should not prevent them from identifying themselves as "agents" or "fugitive recovery agents".

Response: In order for a person to be penalized under the bill for identifying himself or herself as an "agent" or "fugitive recovery agent", the person would have to

wear or display identification of a law enforcement agency containing that term and either misrepresent himself or herself as a peace officer or wear or display the identification in a way that would mislead someone to believe that the law enforcement agency was promoting or endorsing a commercial service or product or a charitable endeavor.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on the State and an indeterminate fiscal impact on local government. There are no statewide data available on misdemeanors to indicate how many offenders are currently convicted and would face an increased penalty under the bill. Nor are data available to indicate how many additional offenders would be convicted of the proposed misdemeanor. Local governments incur the cost of misdemeanor probation and incarceration, both of which vary by county. Public libraries would benefit from any additional penal fine revenue raised.

Fiscal Analyst: Mike Hansen

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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.