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House Bill 5268 (Substitute H-1 as passed by the House)

House Bill 5269 (as passed by the House)

Sponsor: Representative Tom Meyer (H.B. 5268)

Representative Michael Nofs (H.B. 5269)

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 11-28-05

### **CONTENT**

**House Bills 5268 (H-1) and 5269 would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to prohibit and prescribe a felony penalty for torture and include the offense in the sentencing guidelines.** The bills would take effect March 1, 2006. House Bill 5269 is tie-barred to House Bill 5268.

#### **House Bill 5268 (H-1)**

Under the bill, a person who inflicted great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control, with the intent to cause cruel or extreme physical or mental pain and suffering, would be guilty of torture. The felony would be punishable by imprisonment for life or any term of years.

The bill specifies that proof that a victim suffered pain would not be an element of the crime.

A conviction or sentence under the bill would not preclude a conviction or sentence for a violation of any other law arising from the same transaction.

Under the bill, "great bodily injury" would mean either "serious impairment of a body function", as defined in Section 58c of the Michigan Vehicle Code or one or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds. (Under Section 58c, "serious impairment of a body function" includes but is not limited to loss of a limb or the use of a limb; loss of a foot, hand, finger, or thumb or the use of a foot, hand, finger, or thumb; loss of an eye or ear or the use of an eye or ear; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state that lasts for more than three days; measurable brain or mental impairment; a skull fracture or other serious bone fracture; subdural hemorrhage or subdural hematoma; or loss of an organ.)

"Severe mental pain or suffering" would mean the prolonged mental harm caused by or resulting from any of the following:

- The intentional infliction or threatened infliction of great bodily injury.
- The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the personality.

- The threat of imminent death.
- The threat that another person will imminently be subjected to death, great bodily injury, or the administration or application of mind-altering substances or other procedures calculated to disrupt the senses or personality.

"Cruel" would mean brutal, inhuman, sadistic, or that which torments.

### **House Bill 5269**

The bill would add the felony of torture, as proposed by House Bill 5268 (H-1), to the sentencing guidelines. Torture would be a Class A felony against a person, with a statutory maximum sentence of imprisonment for life.

Proposed MCL 750.85 (H.B. 5268)  
MCL 777.16d (H.B. 5269)

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 torture. As of November 2005, California is the only other state with similar legislation. Data regarding the number of offenders convicted of torture in California are currently unavailable. An offender convicted of the Class A offense would receive a sentencing guidelines minimum sentence range of 21-35 months to 270-450 months. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000.

Fiscal Analyst: Lindsay Hollander

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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.