

Legislative Analysis



REVISE ELEMENTS OF CRIMES OF ARSON

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

House Bill 5692

Sponsor: Rep. John Walsh

House Bill 5693

Sponsor: Rep. Kevin Cotter

House Bill 5694

Sponsor: Rep. Joseph Graves

House Bill 5695

Sponsor: Rep. Stacy Erwin Oakes

Committee: Judiciary

Complete to 9-26-12

A SUMMARY OF HOUSE BILLS 5692-5695 AS INTRODUCED 5-29-12

Together, the bills would revise provisions relating to the crime of arson, increase penalties, define terms, and make complementary changes to the sentencing guidelines.

House Bills 5692-5694 all amend Chapter X of the Michigan Penal Code, entitled Arson and Burning, and are tie-barred to each other, meaning that no single bill could take effect unless all are enacted. All three would take effect 90 days after enactment. House Bill 5696 is tie-barred to the other three.

House Bill 5692 would amend the Michigan Penal Code (MCL 750.71, 750.72, and 750.73). Currently, maliciously or willfully burning a building or real property, whether owned by the person setting the fire or by another, is a felony punishable by imprisonment for up to 10 years; burning a dwelling, occupied or unoccupied, is punishable by up to 20 years' imprisonment.

The bill would delete the above provisions and do the following:

- Create a crime of first degree arson—a felony punishable by imprisonment for life or any term of years and/or a fine of not more than \$20,000 or three times the value of the property damaged or destroyed, whichever is greater.

Elements of the crime would include the willful or malicious burning, damaging, or destruction by fire or explosives of a multi-unit building or structure (and its contents) in which one or more units are a dwelling, whether occupied or not, at the time of the fire or explosion; of a building, structure, or real property if the fire or explosion physically injures any individual; or a mine. The crime applies regardless of whether the person owned the dwelling, building, structure, or mine.

- Create a crime of second degree arson— a felony punishable by imprisonment for not more than 20 years and/or a fine of not more than \$20,000 or three times the value of the property damaged or destroyed, whichever is greater.
A person would be guilty of second-degree arson if he or she maliciously or willfully burned, damaged, or destroyed by fire or explosive a dwelling or its contents whether occupied, unoccupied, or vacant, regardless of whether the person owns the dwelling or the contents,.

House Bill 5693 would amend the Penal Code (MCL 750.74, 750.75, and 750.76) to delete the current provisions which pertain to burning personal property, burning of insured property with the intent to defraud the insurer, and to a man or woman burning property owned wholly or in part by his or her spouse.

Instead, the bill would create the crimes of third- and fourth-degree arson and the crime of arson of insured property as follows:

- Third-degree arson would be a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$20,000 or three times the value of the property damaged or destroyed, whichever is greater. A person who willfully or maliciously burned, damaged, or destroyed by fire or explosive any building or structure regardless of whether it was occupied, unoccupied, or vacant, and regardless of whether the he or she owned the property would be guilty of third-degree arson.
- Fourth-degree arson would be a felony punishable by imprisonment for not more than five years and/or a fine of not more than \$10,000 or three times the value of the property, whichever is greater. Regardless of whether a person owned the personal property, a person would be guilty of fourth-degree arson if he or she willfully and maliciously burned, damaged, or destroyed by fire or explosive any personal property valued between \$1,000 and \$20,000; personal property valued at \$200 or more if the person had one or more prior arson or burning convictions; or willfully or negligently set fire to a woods, prairie, or grounds of another person or permitted fire to pass from his or her woods, prairie, or grounds to another's causing damage or destruction to that other property.
- A person who willfully or maliciously burned, damaged, or destroyed by fire or explosive any of the following, or the contents, regardless of whether the person owned the dwelling, building, structure, other real property, or personal property, would be guilty of arson of insured property:
 - Any dwelling insured against loss from fire or explosion if the fire or explosion was caused with the intent to defraud the insurer. The penalty would be a felony punishable by imprisonment for life or any term of years and/or a fine of not more than \$20,000 or three times the value of the property damaged or destroyed, whichever was greater.

- Except as provided above, any building, structure, or other real property insured against loss from fire or explosion if the fire or explosion were caused with the intent to defraud the insurer. A violation would be a felony punishable by imprisonment for not more than 20 years and/or a fine of not more than \$20,000 or three times the value of the property, whichever was greater.
- Any personal property insured against loss by fire or explosion caused with the intent to defraud the insurer. A violation would be punishable by imprisonment for not more than 10 years and/or a fine of not more than \$20,000 or three times the value of the property, whichever was greater.

House Bill 5694 would also amend the Penal Code (MCL 750.77, 750.78, and 750.79). The bill would delete the current provisions in these sections (intent to set fire with inflammables/combustibles/explosives; setting fire to woods/prairies/grounds; and clearing of land and disposing of refuse in townships, respectively).

Instead, the bill would rewrite the sections as follows:

- Create arson in the sixth degree, a misdemeanor. A person would be guilty if she or he intentionally damaged or destroyed by fire or explosive personal property or \$200 or more but less than \$1,000 and one or more prior convictions; or property valued at less than \$200 if the person had one or more prior convictions. The penalty would be imprisonment for not more than one year and/or a fine of not more than \$2,000 or three times the value of the property, whichever was greater. "Personal property" would include various motor vehicles, a trailer, and other personally owned property.
- A person would be prohibited from willfully and maliciously burning, damaging, or destroying by fire or explosive any of the following or its contents, regardless of whether or not he or she owned it:
 - Personal property valued at \$200 or more but less than \$1,000 or valued at less than \$200 and the person has one or more prior convictions. The penalty would be a misdemeanor punishable by imprisonment for not more than one year and a fine of not more than \$2,000 or three times the value of the property, whichever was greater.
 - Personal property having a value of less than \$200 or negligently, carelessly, or recklessly setting fire to a hotel or motel or its contents and by setting that fire, endanger the life or property of another. The penalty would be a misdemeanor punishable by not more than 93 days or a fine of not more than \$500 or three times the value of the property, whichever was greater.
- Move the provisions currently in Section 77 to Section 79 and add the following in regards to placing an incendiary or explosive with intent to commit arson:

- Create a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$15,000 or three times the value of the property, whichever is greater for certain scenarios as specified in the bill.
- Create a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$20,000 or three times the value of the property, whichever is greater, for conduct as specified in the bill.

House Bill 5695 would amend the Code of Criminal Procedure (MCL 777.16c) to place the new felony penalties within the sentencing guidelines; increase the maximum terms of imprisonment and revise the descriptions for several crime categories such as first- and second-degree arson; and delete existing penalty descriptions made obsolete by the bills' revisions.

FISCAL IMPACT:

The bills modify current penalties for certain arson-related offenses, and thus have the potential to affect state and local corrections costs and civil fine revenue. However, the impact of the various changes in the bills on these correctional costs works in opposite directions, so it's indeterminate as to whether these costs and revenues would increase or decrease.

As an example, the bills create a new Class B felony offense for first degree arson punishable by a prison term of up to life. This offense includes arson related to a multi-unit building used as a dwelling and arson that results in a physical injury to a person. Under current law, these offenses would fall under the general offense of arson of a dwelling place, which is a Class B felony with a 20-year maximum prison term. Thus, the average prison stay for offenders convicted of first-degree arson would likely increase to some extent. The same is true for the creation of a new Class A felony offense for arson of an insured dwelling with a maximum sentence of life.

Conversely, however, there are changes which could reduce prison lengths of stay. For instance, under current law, the "arson of a dwelling place" offense is a Class B felony with a maximum 20 year prison sentence. Under the bills, "arson of a dwelling place" (other than a multi-unit building or arson that results in physical injury) becomes second degree arson, which is defined as a Class D felony with a maximum prison term of 20 years. The change from Class B to Class D status would effectively reduce the likely minimum sentences for this offense under sentencing guidelines. This would make offenders eligible for earlier release on parole, and could result in decreased lengths of stay in prison. The same is true for arson of real property which is not a dwelling, which falls from Class D to Class E in the guidelines.

Thus, the overall impact of the bills on state and local correctional costs is indeterminate at this time. To the extent that the bills affect state prison or local jail terms, the average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local

incarceration in a county jail varies by jurisdiction. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,300 per supervised offender per year. Any change in penal fine revenues would affect funding for local libraries, which are the constitutionally-designated recipients of those revenues.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Bob Schneider

■ 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.