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Senate Bills 73 & 74 (as introduced 2-3-15)
Sponsor: Senator Wayne Schmidt
Committee: Judiciary

Date Completed: 2-12-15

CONTENT

Senate Bill 73 would amend the Michigan Penal Code to do the following:

- **Prohibit a person from knowingly obtaining a service or holding another's property with the intent to avoid payment.**
- **Establish a rebuttable presumption that a person intended to avoid payment if he or she took certain actions.**
- **Prescribe felony and misdemeanor penalties for a violation of the bill, depending on the value of the property involved and the offender's prior convictions.**
- **Establish requirements for a prosecutor seeking an enhanced sentence because of prior convictions.**

Senate Bill 74 would amend the Code of Criminal Procedure to include the felonies proposed by Senate Bill 73 in the sentencing guidelines.

Senate Bill 74 is tie-barred to Senate Bill 73.

Senate Bill 73

Violations & Rebuttable Presumptions

The bill would prohibit a person from knowingly doing any of the following with the intent to avoid payment for any service:

- Securing performance of the service by deception, threat, or false token.
- Diverting another person's services to his or her own benefit or to the benefit of another person not entitled to them, when the person diverting the services had control over their disposition.
- Holding another person's personal property under a rental agreement beyond the expiration of the rental period without the effective consent of the property's owner, thereby depriving the owner of use of the property in further rentals, when the person holding the other person's property had control of it.
- Securing the performance of the service by agreeing to provide compensation and, after the service was rendered, failing to make payment after receiving notice demanding payment.

The bill specifies that it would be a rebuttable presumption that the person intended to avoid payment if he or she did any of the following:

- Absconded without paying for the service or expressly refused to pay for the service in circumstances in which payment ordinarily is made immediately when the service is rendered.
- Failed to make payment under a service agreement within 10 days after receiving a notice demanding payment.
- Returned property held under a rental agreement after that agreement expired, and failed to pay the applicable rental charge for the property within 10 days after the date on which he or she received notice demanding payment.
- Failed to return property held under a rental agreement within five days after receiving a notice demanding return, if the property were valued at less than \$1,500; or within three days after receiving such a notice, if the property were valued at \$1,500 or more.

For purposes of the violations and rebuttable presumptions involving failure to pay after receiving a notice demanding payment, the notice would have to be provided in writing and sent by registered or certified mail with return receipt requested, or sent by telegram with report of delivery requested. The notice would have to be addressed to the person at his or her address shown on the rental or service agreement.

Penalties

Violations of the bill would be punishable as shown in Table 1.

Table 1

Value of Property and/or Prior Convictions	Level of Violation	Max. Sentence and/or Fine
\$20,000 or more; or \$1,000 or more but <\$20,000 with 1 or more prior convictions ¹⁾	Felony	10 years; \$15,000 ²⁾
\$1,000 or more but <\$20,000; or \$200 or more but <\$1,000 with 1 or more prior convictions ¹⁾	Felony	5 years; \$10,000 ²⁾
\$200 or more but <\$1,000; or <\$200 with one or more prior convictions	Misdemeanor	1 year; \$2,000 ²⁾
<\$200	Misdemeanor	93 days; \$500 ²⁾
¹⁾ Except a prior conviction involving property valued at <\$200.		
²⁾ Or a maximum fine of 3 times the value of the property involved, whichever is greater.		

Values of property involved in separate incidents pursuant to a scheme or course of conduct within any 12-month period could be aggregated to determine the total value of the property involved.

Enhanced Sentencing

If the prosecuting attorney intended to seek an enhanced sentence based on the defendant's having one or more prior convictions, he or she would have to include on the complaint and information a statement listing the prior conviction or convictions. The existence of a prior conviction would have to be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing.

The existence of a prior conviction could be established by any evidence relevant for that purpose, including one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

If a conviction for a violation of the bill were enhanced by one or more prior convictions, the prior convictions could not be used to enhance the sentence further under the Code of Criminal Procedure's habitual offender provisions.

Senate Bill 74

The bill would include the felonies proposed by Senate Bill 73 in the sentencing guidelines as shown in Table 2.

Table 2

Violation	Felony Category & Class	Statutory Max. Sentence
Obtaining service having value of \$20,000 or more, or \$1,000 or more but <\$20,000 with prior convictions	Property - D	10 years
Obtaining service having value of \$1,000 or more but <\$20,000, or \$200 or more but <\$1,000 with prior convictions	Property - E	5 years

Proposed MCL 750.296 (S.B. 73)
MCL 777.16o (S.B. 74)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills could result in a cost to the State's corrections budget. For any new felony sentences, in the short term, the marginal cost to State government would be approximately \$4,100 per additional prisoner per year. Over the long term, the marginal cost to the State would be approximately \$31,100 per additional prisoner per year. With any increase in the number of felony or misdemeanor cases, costs to local courts and law enforcement could increase. Local units also would incur the cost of incarceration in misdemeanor cases. Additionally, any increase in collected fine revenue would be dedicated to public libraries.

Fiscal Analyst: John Maxwell

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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.