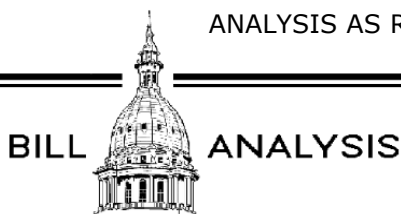




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 487 (as reported without amendment)
Senate Bill 488 (Substitute S-1 as reported)
Sponsor: Senator Darwin L. Boohar
Committee: Judiciary

Date Completed: 11-20-15

RATIONALE

Unmanned aerial vehicle (UAV) technology has progressed and UAVs, commonly called drones, have become readily available to private individuals and pilots for personal use. Therefore, new laws regulating the use of UAVs have become a larger focus for local governments, state governments, and the Federal government as incidents involving UAVs have increased.

There have been several reported cases of individuals using UAVs to gain illegitimate entrance into correctional facilities to deliver contraband to inmates. Although none of these cases occurred in Michigan, it has been suggested that criminal penalties should be applied to individuals who operate drones over or around correctional facilities.

CONTENT

Senate Bill 487 would amend the Corrections Code to make it a felony to operate an unmanned aerial vehicle within 1,000 feet of a correctional facility.

Senate Bill 488 (S-1) would amend the Code of Criminal Procedure to include the felony proposed by Senate Bill 487 in the sentencing guidelines.

The bills would take effect 90 days after their enactment. Senate Bill 488 (S-1) is tie-barred to Senate Bill 487.

Senate Bill 487

The bill would prohibit a person who was operating an unmanned aerial vehicle from flying it within 1,000 feet of any correctional facility. A violation would be a felony punishable by up to four years' imprisonment and/or a maximum fine of \$2,000. The prohibition and penalty would not apply to a law enforcement agency operating a UAV under Federal Aviation Administration regulations.

The bill would define "unmanned aerial vehicle" as an unmanned vehicle or device that uses aerodynamic forces to achieve flight and is piloted remotely. "Correctional facility" would include a facility or institution that is maintained and operated by the Department of Corrections and a facility or institution operated by a private entity under the Corrections Code.

Senate Bill 488 (S-1)

The bill would amend the Code of Criminal Procedure to include the felony proposed by Senate Bill 487 in the sentencing guidelines. Operating an unmanned aerial vehicle within 1,000 feet of a correctional facility would be a Class F public safety felony with a statutory maximum sentence of four years' imprisonment.

Proposed MCL 791.269b (S.B. 487)
MCL 777.17f (S.B. 488)

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

The bills are necessary to regulate the use of UAVs around correctional facilities, in order to prevent a situation in which a UAV could be used for illegal purposes. As seen in examples from Maryland, Ohio, Oklahoma, and South Carolina, UAVs can be used to transport contraband to inmates once the drones have gained access to a correctional facility.

In Maryland, authorities caught two men trying to deliver weapons, drugs, and pornography to prisoners within a facility using a drone. A UAV dropped a package of drugs into the prison yard of a facility located in Ohio, which started a large brawl and required intervention from the facility's security personnel. In Oklahoma, a drone carrying mobile phones, drugs, and hacksaw blades crashed trying to enter the Oklahoma State Penitentiary. Similarly, a drone carrying contraband, including marijuana, tobacco, and cell phones, crashed outside of a prison in South Carolina.

The bills would help deter similar incidents in Michigan, and would prescribe appropriate punishment for violators. The maximum penalty of four years and \$2,000 would be consistent with the current penalty for trespassing upon the property of a State correctional facility.

Response: Although the regulation of UAVs over correctional facilities is necessary, there are several concerns about Senate Bill 487.

First, the bill could conflict with Federal Aviation Administration (FAA) guidelines. Under 49 USC 40103, the United States government has exclusive sovereignty of airspace of the United States, and the FAA develops plans and policy for the use of the navigable airspace. Specifically, the FAA prescribes air traffic regulations on the flight of aircraft for navigating, protecting, and identifying aircraft; protecting individuals and property on the ground; using the navigable airspace efficiently; and preventing collisions between aircraft, aircraft and land or water vehicles, and between aircraft and airborne objects. According to the FAA, any state or local law pertaining to UAVs or aircraft is reviewed on a case-by-case basis to make sure it does not conflict with FAA authority and regulations.

Also, it could be helpful if the bill included a provision regarding the intent of an individual operating a UAV. If someone, such as a hobbyist, accidentally violated the airspace of a correctional facility but never had any intent to do so, he or she would still face serious consequences.

Additionally, the State already has laws against smuggling contraband into correctional facilities for the purposes of distribution to prisoners. Public Act 17 of 1909 forbids an individual from selling, giving, or furnishing to a prisoner, either indirectly or directly, any alcoholic liquor, prescription drug, poison, or controlled substance; a weapon or other implement that may be used to injure a prisoner or other person, or to assist a prisoner to escape; or a cellular telephone or other wireless communication device. A violation of the Act is a felony, punishable by a fine of up to \$1,000, or imprisonment for up to five years, or both (although there are special penalties regarding controlled substances, as outlined in the Act).

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

Senate Bill 487 could result in costs to State and local government. An increase in arrests would place incremental resource demands on local court systems, law enforcement, and prisons. For any new felony convictions that resulted in the offenders being sent to prison, the marginal cost to State government would be approximately \$4,100 per additional prisoner per year. Any associated increase in fine revenue would be dedicated to public libraries.

Including the proposed felony in the sentencing guidelines would have an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v*

Lockridge (in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases, which means that the addition to the guidelines under Senate Bill 488 (S-1) would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction would depend on judicial decisions.

Fiscal Analyst: Ryan Bergan

A1516\487a

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.