

OFFENSE VARIABLE 9: SCORE FETUS AS VICTIM

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House Bill 4500 as introduced
Sponsor: Rep. Pamela Hornberger
Committee: Judiciary
Complete to 9-7-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill would require a fetus to be counted as a victim for purposes of scoring Offense Variable 9. Offense variables are used when determining an appropriate criminal sentence for a person convicted of certain crimes.

House Bill 4500 would amend Chapter XVII of the Code of Criminal Procedure, entitled "Sentencing Guidelines". Under Part 4 ("Offense Variables"), Offense Variable 9 is scored based on the number of victims. The points scored range from 0 (fewer than 2 victims who were placed in danger of physical injury or death, or fewer than 4 victims placed in danger of property loss) to 100 points if multiple deaths occurred.

Currently, each person who was placed in danger of physical injury or loss of life or property as a victim must be counted as a victim. The bill would require that for purposes of scoring Offense Variable 9, an embryo or fetus also be counted as a person.

The bill would take effect 90 days after enactment.

MCL 777.39

BACKGROUND INFORMATION:

Michigan uses an indeterminate sentencing scheme for most criminal offenses, meaning that many sentences are expressed as a range of months or years. The maximum sentence that can be imposed for a particular crime is established in statute. In determining an appropriate sentence range, the judge looks at and scores a number of factors such as whether the offender has a record of prior convictions and certain elements of the crime, known as "offense variables," for example, whether a gun was used or a victim was injured or killed. In some cases, increasing the points that may be scored for a particular offense variable may affect whether the person would be eligible for community-based sanctions, such as jail and/or probation, or sent to prison. It also could affect a person's earliest parole date if the addition of the increased points to a particular offense variable resulted in a longer minimum sentence. While the sentence range is no longer mandatory, it is used to provide guidance in determining a sentence appropriate to the facts of the crime; a judge has discretion to go above or below the sentencing range.

FISCAL IMPACT:

To the extent that the bill results in a greater number of convictions, it could increase costs on state and local correctional systems. New felony convictions would result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. In FY 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. In FY 2016, state costs for parole and felony probation supervision averaged about \$3,500 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Also, the bill could increase costs on the judiciary and local court funding units. Cost would depend on how the bill affects caseloads and related administrative costs.

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