



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

BILL ANALYSIS



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

Senate Bill 19 (as passed by the Senate)
Sponsor: Senator Michael J. Bouchard
Committee: Judiciary

Date Completed: 2-8-95

RATIONALE

Michigan law provides for an enhanced penalty when a felony is committed with a firearm. This law recognizes that the very presence of a deadly weapon during the commission of a crime can put victims in great danger. Similarly, according to some, since the human immunodeficiency virus (HIV) can be transmitted sexually, the lives of victims of rapists who carry the virus are greatly endangered simply by the presence of the HIV. In effect, some people believe, a rapist who has acquired immunodeficiency syndrome (AIDS) or is HIV-infected can use that affliction as a deadly weapon, just as any armed felon can threaten a life by brandishing a firearm. Therefore, they believe that a person who commits criminal sexual conduct (CSC) with the knowledge that he or she has AIDS or carries the HIV should be subject to an additional prison term.

CONTENT

The bill would amend the Michigan Penal Code to allow a court to impose an enhanced penalty upon a person convicted of certain CSC offenses if the offender knew at the time of the violation that he or she had been diagnosed as having AIDS or that he or she was "HIV infected". The bill would take effect on October 1, 1995, and would apply to offenses committed on or after that date.

A term of imprisonment of up to three years, in addition and consecutive to any term of imprisonment imposed for the underlying offense, could be imposed for CSC in the first, second, third, or fourth degree or for assault with intent to commit CSC, if the violation involved sexual penetration or exposure to a body fluid of the defendant. The bill would not prohibit a person from being charged with, convicted of, or punished

for any other violation committed while violating the bill.

"HIV infected" would mean the status of a person who had tested positive for the human immunodeficiency virus, as indicated by either a double positive enzyme-linked immunosorbent assay test, or a positive result under an HIV test considered reliable by the Federal Centers for Disease Control and approved by the Michigan Department of Public Health.

Proposed MCL 750.520n

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

Criminal sexual conduct is a heinous crime that terrorizes a victim not only during the perpetration of the offense, but also for long after the violation occurs. As such, CSC is treated harshly in the law and offenders are subject to strict penalties. This continual victimization of those who have been raped, however, would be compounded greatly if the rapist transmitted the HIV to the victim. Infecting a victim with the virus potentially could subject that person to a long, slow, and probably very painful death. As surely as the possession of a firearm by a felon puts a victim in great danger, the presence of the HIV could endanger the life of a CSC victim. Even if a victim never actually contracts AIDS, he or she always must live with that possibility after being exposed to the virus. Although there are no validated reports of an HIV-infected person forcefully transmitting the virus, there reportedly have been instances of rapists

intentionally spreading other sexually transmitted diseases. The law should make it clear that people who used their HIV affliction as a weapon to terrorize rape victims could be punished even more severely for knowingly transmitting the virus.

Response: The bill simply is not needed. It already is a felony under Michigan law for a person who knows he or she is HIV-infected to engage in sexual intercourse with another person without informing that individual of the infection.

Opposing Argument

The bill is an irrational reaction to the widespread fear of, and ignorance about, AIDS and conflicts with the public policy goal of promoting AIDS awareness and education. Even though the Judiciary Committee adopted an amendment limiting the bill to violations that involved sexual penetration or exposure to a bodily fluid, the bill still could subject an infected individual to an enhanced penalty even if the offender did not engage in an activity that could transmit the HIV. For instance, first- and third-degree CSC involve sexual penetration, but if the penetration in question involved the use of an object, rather than sexual intercourse, the victim would not be at risk of contracting the AIDS virus. Although certainly deserving of punishment for committing CSC, such an offender should not be subject to enhanced penalties simply because he or she was afflicted with AIDS or carried the HIV.

Response: Even though some actions that constitute CSC might not be high-risk activities for transmitting the HIV, the bill should apply to various degrees and circumstances since violators often plead to a lesser offense. For various reasons, the offense of which a criminal is convicted may not necessarily be the violation actually committed. Further, the bill's enhanced penalties would be permissive, not mandatory. A sentencing judge could determine from the facts of each case whether the CSC offender knowingly put his or her victim at risk of contracting the virus and then determine whether imposition of the enhanced penalty was appropriate.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on State government. The Department of Corrections could realize increased costs depending on how many times judges chose to impose the additional sentences outlined in the bill. There are no data currently available that would indicate how many individuals are convicted of committing criminal sexual conduct while knowingly infected with the HIV. If five individuals were convicted each year, each receiving additional three-year sentences, annual costs for the Department would increase by between \$150,000 and \$225,000 depending on security confinement.

Fiscal Analyst: M. Hansen

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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.