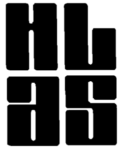
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CODE OF CRIMINAL PROCEDURE REVISIONS

House Bill 5279 as enrolled
Public Act 483 of 2002
Third Analysis (7-1-02)

Sponsor: Rep. Gary Woronchak
House Committee: Criminal Justice
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Under the Code of Criminal Procedure, the sentencing court must include in each order of probation that the Department of Corrections (DOC) is to collect a probation supervision fee of not more than $30 multiplied by the number of months of probation ordered, but for not more than 60 months (or 36 months if assigned to youthful trainee status or 12 months if under an order of delayed sentence). The fee can be paid in monthly installments if allowed by the court. In determining the fee, the court must use a table contained in the code that bases the monthly fee on the probationer's projected monthly income and resources.

In November of 2001, the governor issued Executive Order No. 2001 - 9 to implement expenditure reductions for the 2001-2002 fiscal year. Included in E.O. No. 2001 – 9 were increases in the monthly parole and probation supervision fees for those earning more than $500 per month. These increases, however, are only for the current budget year and will expire on September 30th. For several reasons, including the ongoing revenue shortfalls, some feel that the fee amounts in statute should be permanently increased. Others feel that amending a statutory fee structure should be addressed through legislation rather than by executive order. To address these concerns, legislation has been introduced to incorporate the higher fee structure for supervision of parolees implemented earlier this year.

This legislation would also address two other issues of concern. Public Act 208 of 2001, which was part of the legislative package to revise the domestic violence laws, added aggravated assault to the list of assaultive crimes for which a court must deny release on bail during the time period between when a defendant is convicted of an assaultive crime and when the defendant is sentenced. In light of the recent terrorist attacks of September 11, 2001, it is believed that a person convicted of violating the new Michigan Anti-Terrorism Act or a crime involving the use of explosives, as well as a conviction for other assaultive crimes, should be also be denied release on bail while awaiting sentencing.

Further, in a separate matter, it has become apparent that provisions of law pertaining to the jurisdictional authority of peace officers to make an arrest are ambiguous. Generally, the jurisdictional authority of law enforcement personnel is limited by the geographical boundary of their employing entity. For example, state troopers have statewide jurisdiction for the enforcement of state laws, county sheriffs and their deputies operate within their county of origin, and municipal police officers have jurisdiction within their respective cities, villages, and townships. Various laws, however, extend the jurisdictional authority of police officers in certain, statutorily specified circumstances. For example, most police officers have the authority to pursue an individual that the officer has witnessed violating a law, ordinance, or civil infraction (such as traffic offenses) across geographical boundaries. Current law also authorizes a police officer to go beyond his or her geographical boundary to enforce state laws in conjunction with the state police or to assist a peace officer of another jurisdiction.

However, several cases in recent years have shown that in some respects, the current statutes are not clear. In particular, the law is unclear as to the authority of an officer to cross jurisdictional lines and arrest an individual for a crime that arose during or became apparent after a pursuit began. A situation that illustrates the weakness of the current statute involved an officer in the City of Springfield.

Springfield is a western Michigan city that is surrounded by the larger City of Battle Creek. It is not unusual, therefore, for Springfield officers to pursue motorists across city boundaries during

routine traffic stops. On one occasion several years ago, an officer observed a motorist in violation of the seat belt law. By time the motorist stopped, he had crossed into the City of Battle Creek. When the officer approached the car, it became apparent that the driver had been drinking. A breathalyzer test revealed a blood alcohol content of over .2 grams, twice the legal limit. Unbeknown to the officer at the time, the motorist had two prior drunk driving convictions. The motorist was subsequently charged with a felony OUIL for a third offense. The felony drunk driving charge was later dismissed by the circuit court after the court suppressed the evidence of the driver's intoxication.

The evidence was suppressed because the court ruled, based on a court of appeals ruling, that because the officer only witnessed the improper use of the seat belt in his own jurisdiction, he only had authority to ticket for the seat belt infraction, and therefore did not have the authority to arrest or ticket the driver for driving while intoxicated. The result was that a drunk driver with two prior convictions went unpunished. Several other drunk driving cases around the state have also been thrown out under similar reasoning. It is believed, therefore, that legislation is needed to clarify the authority of police officers when pursuing someone across jurisdictional boundaries and to address the prior.

THE CONTENT OF THE BILL:

The bill would amend the Code of Criminal Procedure to: 1) raise probation supervision fees and fees for supervision of people assigned youthful trainee status and persons under a delayed sentence order; 2) expand the jurisdictional authority of peace officers; and, 3) add several more crimes to the definition of "aggravated assault" for which a defendant convicted of an assaultive crime could be denied release on bail while awaiting sentencing or appeal. The bill would take effect October 1, 2002.

Probation supervision fees. The bill would amend the code to increase probation supervision fees and supervision fees for persons assigned youthful trainee status and for those under a delayed sentence order. Under the code, monthly probation supervision fees are determined by sentencing court based on projected monthly income and resources. Currently, the code caps the monthly amount that can be collected at $30; the bill would increase this amount to $135. In addition, the bill would make the following increases: for a monthly income between $500 and $749.99, the monthly fee would increase from $20 to $25; for income between $750 and $999.99, the fee would increase from $30 to $40; and for a monthly income of $1,000 or more, the fee would be 5 percent of the person's monthly income, but not more than $135. Currently, the monthly fee for an income of $0 to $249.99 is $0 and the fee for an income of $250 to $499.99 is $10. These would remain the same.

Expansion of police jurisdiction. Currently, a peace officer of a county, city, village, or township can exercise authority and powers outside his or her own municipality - the same as if he or she were in his or her own municipality - when he or she is enforcing state laws, or in conjunction with a peace officer of the municipality in which he or she may be in. House Bill 5279 would amend the Code of Criminal Procedure to expand and clarify a local police officer's authority to make arrests outside of his or her jurisdiction. The bill would specify instead that a county, city, village, township, or university peace officer would be authorized to exercise authority outside the geographical boundaries of his or her municipality under any of the following circumstances:

- if the officer was enforcing state laws in conjunction with the Michigan State Police;

- if the officer was enforcing state laws in conjunction with a peace officer of any local municipality or university in which he or she may be; or,

- if the officer witnessed the following violations within the geographical boundaries of the officer's municipality or university and immediately pursued the individual outside of that geographical boundary: a state law or administrative rule; local ordinance; or a law, rule, or ordinance that was a civil infraction, municipal civil infraction, or state civil infraction.

Under the bill, an officer pursuing an individual under the above circumstance could stop and detain the person outside the officer's municipality or university for the purpose of enforcing the law, administrative rule, or ordinance or for the purpose of enforcing any of these before, during, or immediately after the detaining of the individual. The bill would also apply to a vessel on a lake or river. The officer pursuing an individual on any waters of the state could direct the operator of the vessel to bring it to a stop or maneuver it in a manner that would allow the officer to come beside the vessel.

Denial of bail for conviction of assaultive crimes. Currently, a defendant convicted of an assaultive crime must not be admitted to bail while awaiting sentence unless the trial court finds by clear and convincing evidence that the defendant is not likely to pose a danger to other persons. A defendant who,

after being convicted and sentenced, has filed an appeal or an application for leave to appeal must also be detained and not admitted to bail unless the trial court or the court to which the defendant appealed finds by clear and convincing evidence that the defendant is not likely to pose a danger to others and the appeal or application raises a substantial question of law or fact.

The bill would add the following crimes to the definition of "assaultive crime":

- Threats or assaults against a person who works for the Family Independence Agency (Lisa's Law).

- Various assaultive crimes against a pregnant woman with the intent to cause a miscarriage or stillbirth, or great bodily harm to the fetus or embryo, and a miscarriage or stillbirth resulted.

- Various assaultive crimes against a pregnant woman that resulted in a miscarriage, stillbirth, or great bodily harm to the embryo or fetus.

- Attempt to murder by poisoning, drowning, strangling, or by any means that does not constitute the crime of assault with intent to murder.

- A violation of Chapter 33 of the Michigan Penal Code, entitled "Explosives and Bombs, and Harmful Devices.

- Stalking a victim under 18 and the defendant is five years or more older than the victim. [Note: The bill also adds MCL 750.411h(3) to the definition of assaultive crime, but this appears to be an error as Section 411h(3) pertains to the court placing an individual convicted of stalking on probation.]

- A violation of the Michigan Anti-Terrorism Act, Chapter 83-A of the Michigan Penal Code.

Currently, "assaultive crime" is defined as the following crimes: felonious assault and felonious assault in a weapon free school zone; assault with intent to commit murder; assault with intent to do great bodily harm; assault with intent to maim; assault with intent to commit burglary or any other felony; assault with intent to rob and steal, whether armed or unarmed; first- or second-degree murder; manslaughter; kidnapping; prisoner taking person as hostage; leading, taking, enticing away a child under 14 years of age; mayhem (described as – with malicious intent - cutting out or maiming the tongue, putting out an eye, cutting or tearing off an ear, cutting off or disabling a limb or organ, etc. of another person); aggravated stalking; criminal sexual conduct offenses; armed robbery; carjacking; and unarmed robbery.

BACKGROUND INFORMATION:

Parole supervision fees. Senate Bill 1359, which has been ordered enrolled, makes identical increases to the fee structure for parole supervision fees.

Denial of bail for conviction of assaultive crime. Senate Bill 735, which became Public Act 208 of 2001, added "aggravated assault" to the definition of "assaultive crimes", thus allowing a defendant convicted of aggravated assault to be denied release on bail while awaiting sentencing (or denied release during the time the case is being appealed.) Public Act 208 was part of a large, bi-partisan legislative package that amended various domestic violence laws.

Expansion of police jurisdiction. The provision within House Bill 5279 that would expand and clarify a local police officer's authority to make arrests outside of his or her jurisdiction is identical to House Bill 4401, which was passed by the House of Representatives in February of this year.

A very recent Michigan Supreme Court case addresses this very issue. *People* v *Hamilton* (Docket no. 118615, 2002) involved a case similar to the Springfield incident. In *Hamilton*, a Howell police officer pursued a vehicle that had nonfunctioning taillights. The officer also observed the car weave in the lane and touch the shoulder of the road. A sobriety test confirmed that the driver was intoxicated, and he was arrested. Later, it was found that the defendant had two prior drunk driving convictions and was driving on a suspended license; the defendant was subsequently charged with felony OUIL. The defendant moved for suppression of the evidence and dismissal on the grounds that the arrest was illegal because the officer was outside his jurisdiction. The circuit court granted the motion and quashed the evidence and dismissed the case. The prosecutor appealed, but the appellate court upheld the trial court's decision.

Apparently, there is some disagreement over an officer's authority to arrest for a felony when outside his or her jurisdiction. The penal code (MCL 764.16) allows even private citizens to make arrests for a felony that they have witnessed or have probable cause to believe has been committed. The appellate court ruled that this statute did not apply to the officer because he did not have probable cause to believe that the defendant had committed a felony (though the officer observed behavior giving probable cause for a drunk driving offense, there was

no way for the officer to know at that time that the driver had two priors, thus making this offense a felony). The court also found that the officer was in violation of the existing statutes pertaining to making arrests when crossing jurisdictional boundaries. Therefore, the appellate court ruled that the suppression of the evidence and the dismissal of the case by the trial court were appropriate.

The case was appealed to the Michigan Supreme Court for a de novo review of the statutory interpretation of MCL 764.2a (the section of law that House Bill 4401 would amend) – specifically, that if an officer violated the statute as the officer in the *Hamilton* case did, did it follow that any evidence obtained as a result of the arrest should be suppressed. In its decision, the supreme court said, "we find no indication in the language of MCL 764.2a that the Legislature intended to impose the drastic sanction of suppression of evidence when an officer acts outside the officer's jurisdiction." The *Hamilton* court went on to write that "the statute was intended, not to create a new right of criminal defendants to exclusion of evidence, but rather to 'protect the rights and autonomy of local governments' in the area of law enforcement." Therefore, the court ruled that the statute in question "does not require exclusion of evidence obtained as a result of police conduct that is not in accordance with the statute . . ." and reversed the court of appeals ruling and remanded the case to the circuit court for further proceedings.

FISCAL IMPLICATIONS:

In a fiscal note dated 6-13-02, the House Fiscal Agency reports that according to the State Budget Office and the Department of Corrections, the parole and probation fee increases are expected to increase collections by $843,800 annually. (Senate Bill 1359, which has been ordered enrolled, would similarly increase parole supervision fees.) This anticipated increase in revenue is reflected in the proposed fiscal year 2002-2003 budget, which assumes total parole and probation supervision fee revenue of $13,031,600. If the proportion of fee revenue received from probationers corresponds with the proportion of probationers in the parole and probation supervised population, then the revenue increase under the bill would be $667,600 annually.
The HFA goes on to report that by amending the definition of "assaultive crime" to include a variety of additional offenses, the bill would expand application of current restrictions on bail for defendants convicted of assaultive crimes and awaiting sentence. The bill thus could increase local correctional costs to the extent that offenders who otherwise might have been released from jail were instead detained.

Finally, the provision that would expand and clarify the power of a peace officer would have no direct fiscal impact on the state or local units of government.

ARGUMENTS:

For:
The bill would codify the probation portion of the temporary increases in parole and probation supervision fees made in Executive Order No. 2001 – 9. (Senate Bill 1359 would codify the parole fee increases.) The fee increase was deemed necessary to help balance the budget for the current fiscal year. As the current economic downturn is expected to result in revenue shortfalls for the next several years, some feel that the statute should be amended to make these increases permanent. In fact, by executive recommendation, the fiscal year 2003 budget for the DOC is predicated on this fee increase being continued. The fees would not, however, be altered for persons in the lowest income brackets. Though the fees would be increased, the amounts are fairly modest. Even for a parolee making $1,000 or more, the fee would be $50 for each thousand dollars earned. According to a representative of the DOC, the fee increases do not cover the cost of providing supervision. Therefore, supervision of probationers will still remain largely subsidized by taxpayers. But, as the adage goes, every little bit helps.

For:
Though the fee increase for supervision of probationers was instituted for this fiscal year by executive order, some have questioned whether amending fee structures contained in statute falls within the authority granted the executive office by the state constitution. Therefore, it is believed by some that to avoid questions of constitutionality, whether temporary or permanent, changes to statutes should be addressed by the legislature. The bill would address this concern by amending the Corrections Code to incorporate the recommended probation supervision fees.

For:
Police officers cross geographical boundaries every day to issue traffic citations, pursue a motorist fleeing or eluding arrest, or make an arrest for a crime that an officer witnessed. Though various statutes appear to give officers the authority to do so, there remains a gray area that has allowed offenders to slip through. It is not uncommon for police officers to observe a minor traffic infraction or equipment failure on a

vehicle and pull the vehicle over. If, however, before the vehicle stops, it crosses into a different township, village, county, or city, some recent trial and appellate court decisions have ruled that the officer only has the authority to cite the driver for the original offense observed, and not for any crime that becomes apparent before the driver stops the car or after the driver stops the car. For example, there appears to be disagreement over whether an officer can make an arrest if, after stopping a vehicle for a traffic offense that has crossed a geographic boundary, the officer observes a gun or drugs in plain sight in the car.

Also, in several cases in recent years, officers pulled over drivers for traffic offenses only to discover after the car stopped (in a different jurisdiction) that the driver was intoxicated. In some of these cases, the drivers had two or more prior drunk driving convictions – meaning that the driver now would be subject to a felony charge for a third offense. Unfortunately, due to the existing gray area in state law, several courts have suppressed the evidence leading to the felony drunk driving charge and dismissed the cases. The result is that several repeat drunk drivers got off unpunished and were returned to the road.

The bill would remedy this situation by clarifying the circumstances under which a peace officer would have authority to cross jurisdictional boundaries. The bill would include university peace officers (if their governing board approved), and would apply to situations in which the officer witnessed a violation of state law, administrative rule, a local ordinance, or a violation of a civil infraction, municipal civil infraction, or state civil infraction. The bill would also apply to vessels operating on the waters of the state (to enforce the prohibition on drinking while operating watercraft and other laws pertaining to watercraft). The bill would not limit any due process rights of defendants, but would merely close a loophole that some drunk drivers have used to escape prosecution.

Response:

The bill includes violations of administrative rules. Reportedly, this was included to allow conservation officers pursuing violators across geographic boundaries. However, this section of law is not defined to include conservation officers, but appears to only apply to county, city, village, township, or university peace officers.

Against:

The recent Michigan Supreme Court ruling in *People* v *Hamilton* makes the section of the bill pertaining to the expansion and clarification of police jurisdiction unnecessary.

Response:

Hamilton doesn't speak to all the situations covered by the bill; for instance, the bill resolves any question of an officer's liability, whereas the *Hamilton* ruling does not. Further, the bill includes university peace officers. The last time that this section of law was amended, universities did not have the statutory authority to have their own police forces. Public Act 120 of 1990 allowed universities to create their own police departments independently of the local municipality. Since university peace officers must be MCOLES-trained (Michigan Commission on Law Enforcement Standards), and are authorized to enforce state law and ordinances and regulations of the university on university grounds and on adjacent public rights of way, it only makes sense to include them at this time.

For:

Assaultive crimes, whether crimes of intent or crimes of passion, tend to be crimes of repetition. In recognition of the serious and tragic outcomes of assaultive crimes, and the potential for a person convicted of such a crime to reoffend, it has long been an accepted practice to require courts to deny bail for a person convicted of an assaultive crime for the time period in-between conviction and sentencing. Recently, the legislature added "aggravated stalking" to the definition of "assaultive crime". On further scrutiny, it would make sense to include other types of assaultive crimes that also often lead to serious injury or death to the victim. The bill would do just that. Each of the crimes added are not only serious offenses, but also crimes that carry the possibility of being repeated, whether as an act of revenge against those who testified against the defendant, or because the nature of the offense was to harm as many people as possible – such as with acts of terrorism. However, as is currently allowed, a person who is convicted of any of these crimes but who poses no harm could still be released on bail while awaiting sentencing or while his or her case is on appeal.

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