



**House  
Legislative  
Analysis  
Section**

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**CHILD WITNESSING A VIOLENT  
CRIME**

**House Bill 5291 as enrolled (Vetoed)**  
**Sponsor: Rep. Barb Vander Veen**

**House Committee: Criminal Justice**  
**Senate Committee: Judiciary**

**Second Analysis (2-6-03)**

***THE APPARENT PROBLEM:***

According to the National Center for Children Exposed to Violence, at least 3 million (and as many as 10 million) children witness domestic violence incidents each year, and approximately 9 million adolescents have witnessed serious violence during their lifetimes. A study conducted by researchers at Michigan State University reveals the types of domestic violence directed towards women that children often witness: in the four months preceding the women's first interview, approximately 30 percent of the women in the study reported having been punched, kicked, strangled, burned, or hit with an object. Twenty-eight percent reported forced sexual activity, 21 percent had been tied up or physically restrained, and 18 percent had been threatened with a weapon or had had a weapon used against them. These incidents resulted in 41 percent of the women reporting cuts, scrapes, or bruises; 9 percent reported permanent scarring; 5 percent reported internal injuries; and 1.3 percent reported gun or knife wounds. This was in addition to a substantial amount of psychological abuse. [Sullivan, C.M., Juras, J., Bybee, D., Nguyen, H., & Allen, N. (2000). "How children's adjustment is affected by their relationships to their mothers' abusers." *Journal of Interpersonal Violence*, 15(6), 583-598.]

The impact on the children who witness such violence, especially witnessing it over time, is so profound that researchers now believe that its effects are similar or equal to those of children who suffer physical abuse. [Jaffe, P., Wolfe, D., Wilson, S. & Zak, L. (1986). "Similarities in behavioral and social maladjustment among child victims and witnesses to family violence." *American Journal of Orthopsychiatry*, 56, 142-146.] A U.S. Department of Justice publication adds that children exposed to domestic violence "experience feelings of terror, isolation, guilt, helplessness, and grief." Many also exhibit psychosomatic symptoms such as headaches,

anxiety, embarrassment, and even ambivalence towards ongoing violence. The long-term impact can be seen in a significant link between childhood victimization and later involvement with violent crimes, as well as "mental health problems, educational difficulties, alcohol and drug abuse, and employment problems." ["Breaking the Cycle of Violence: Recommendations to Improve the Criminal Justice Response to Child Victims and Witnesses", *OVC Monograph* (June 1999).]

Domestic violence is not the only form of violent crime that children are exposed to. Children have witnessed incidents of incest committed against a sibling. Children have watched relatives or friends be killed in robberies, drug activities, drive-by shootings, and by gang violence. For example, in East Lansing a few years ago, a four-year-old boy who was in the back seat of a car watched as two men shot and killed his mother who was sitting in the driver's seat. Researchers also report that children who witness violence are at an increased risk of being physically injured or abused by the offender. A recent incident in Jackson underscores the danger to children. A six-year old boy who witnessed a neighbor stabbing his mother to death was himself stabbed repeatedly by the man while the boy asked a 9-1-1 dispatcher for help.

Considering the serious and long-term effects on children of witnessing violent crimes, many feel that the laws need to be amended to send a clear message to adults that children need to be protected and not exposed to violent acts. One suggestion has been to amend the sentencing guidelines to add points to the guidelines that judges use when sentencing people convicted of felonies, thereby increasing the minimum amount of time a violent offender would have to spend in prison before release on probation or parole.

**House Bill 5291 (2-6-03)**

In a separate matter, in late 2001, the legislature passed a multi-bill package revising the state's domestic violence laws. One component of the package was to amend many provisions of law to include crimes committed against a person with whom the offender had or previously had a dating relationship as domestic violence. Apparently, not all of the relevant provisions of law were so amended. Legislation is needed to add "dating relationship" to a couple provisions of law that were missed in the earlier legislation.

### ***THE CONTENT OF THE BILL:***

The Code of Criminal Procedure utilizes a classification and grid system to guide judges when determining an appropriate sentence for people convicted of violating the law. The code currently identifies 20 offense variables and assigns various points to be scored depending on whether and how the offense variable applies to the particular violation. House Bill 5291 would revise offense variable 5 and add a definition of "violent crime" to the code.

Currently under the code, offense variable 5 (psychological injury to a member of a victim's family) must be scored for all crimes against a person and for the crimes of homicide, attempted homicide, conspiracy or solicitation to commit a homicide, and assault with intent to commit murder. Instead, the bill would amend the code to require that offense variable 5 be scored for all violent crimes. The bill would define "violent crime" to mean (except as used in Section 16m of the code) a homicide or a crime against a person in which physical force or violence was used or threatened. The term would include an attempt, conspiracy, or solicitation to commit such a crime.

Section 16m specifies that wearing body armor during the commission of a violent crime – in violation of MCL 750.227f (Section 227f of the Michigan Penal Code) – is a Class F felony against the public safety with a four-year maximum term of imprisonment. The bill would replace "violent crime" with "certain crimes". Section 227f of the penal code specifies that an individual who commits or attempts to commit a crime that involves a violent act or a threat of a violent act against another person while wearing body armor is guilty of a felony.]

Further, the bill would specify that offense variable 5 would be psychological injury to a member of a violent crime victim's family or a child. (Underlining denotes changes.) Currently, serious

psychological injury requiring professional treatment that occurs to a victim's family has a score of 15 points, and the same number of points may be scored even if treatment has not been sought or is not conclusive. Instead, the bill would specify that serious psychological injury which required or which may require professional treatment that occurred to a violent crime victim's family or to a child if the injury to the child resulted from the child witnessing a violent crime would be scored with 15 points. The bill would also specify that in making a determination of whether professional treatment might be required under the previous provision, the fact that treatment had not been sought would not be conclusive.

The bill would also add to the scoring of offense variable 5 whether a child witnessed a violent crime (10 points) and whether a child observed the physical results of a violent crime against a family member (5 points). As is currently the case, if none of these variables applied to the violation, the score for offense variable 5 would be zero points.

Finally, the bill would include crimes committed by an individual with whom the victim had or has had a dating relationship in a provision prohibiting a magistrate from refusing to accept a complaint alleging a violation of the assault laws and a provision pertaining to written policies for police officers responding to domestic violence calls. In both instances, "dating relationship" would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship would not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

MCL 764.1a et al.

### ***FISCAL IMPLICATIONS:***

According to the Senate Fiscal Agency, the bill would have an indeterminate fiscal impact on state and local government. To the extent that the court would have to score offense variable for all violent crimes rather than only those currently specified, the bill could increase the length of sentences violent offenders receive and therefore increase state and local criminal justice costs. To the extent that the bill would revise the descriptions and point values under offense variable 5, it would have an indeterminate impact on state and local criminal justice costs. The proposed revisions could change the length of sentences that offenders receive, but there are no data

to indicate whether an overall positive or negative impact on sentence length would result.

Further, according to the agency, the bill would increase state and local criminal justice costs to the extent that adding dating relationships to the applicable sections would potentially increase the number of warrants issued, arrests, and offenders convicted for domestic violence offenses. (12-10-02)

## **ARGUMENTS:**

### **For:**

Michigan has strong laws and programs to prevent child abuse and neglect, and to punish those who violate the law, but too often people do not realize the effects on children who are mere witnesses to acts of violence. Unfortunately, studies are revealing that when children witness violent acts, and especially if they are subjected to witnessing ongoing incidents of violence, that they suffer just as profoundly as if they themselves had been physically assaulted. Whether witnessing years of physical and psychological abuse of a parent or sibling, or a single violent act against a relative or friend, it is now apparent that these children can suffer academically, socially, physically, and emotionally for years, even into their adult years. In addition, witnessing a violent crime significantly increases the risk of the child being assaulted or killed; researchers estimate that from 30 percent to 50 percent of children who are witnessing a violent crime also become a victim of that crime. Some researchers believe that childhood victimization (even victimization through witnessing violence) puts children at a higher risk for becoming violent offenders in the future.

It is apparent, therefore, that more must be done to protect children from being witnesses to acts of violence. The legislature recently toughened the state's domestic violence laws through measures that included counting out-of-state domestic violence convictions when sentencing for repeat offenses and honoring personal protection orders issued in other jurisdictions. However, too many incidents of domestic violence and other violent crimes are being committed in the presence or in the hearing of children.

The bill would address this issue by revising one of the offense variables that judges use when determining an appropriate sentence for a violent felony offense. If serious psychological injury requiring professional treatment (such as mental health services) occurred to a member of a violent

crime victim's family, the judge would have to add 15 points to the offender's score. The same would have to be done if a child witnessed the violent crime and suffered such injury. This would appear to include an incident in which a child was traumatized by an assault on a non-family member. Even if the person so injured did not seek psychological treatment immediately, a judge could not automatically rule out this variable.

If a child witnessed a violent crime (but did not appear to have suffered psychological damage), 10 points would have to be scored. This provision, like the one before it, would appear to apply to witnessing both domestic violence (committed against a family member) and to violent acts committed against anyone in the child's presence. If a child observed the physical results of a violent crime against a family member, 5 points would be scored. This provision would apparently apply only to domestic violence incidents or a violent crime committed against a relative, and not to a child witnessing a violent crime that involved a friend, acquaintance, or stranger. Also, as written, the child would not have to be physically present, or within earshot, when the crime was committed. Merely being able to observe the physical results of a violent act, such as seeing a bruise, a broken bone, etc., would enable a judge to consider scoring the points for this variable.

Most felonies have a statutory cap on the maximum number of years of imprisonment that an offender can be sentenced to serve. Therefore, for those offenses that allow probation or parole, the bill's changes would result in an increase to the minimum sentence an offender would have to serve before being eligible for release on probation or parole. It is hoped that the possibility of increased prison time would suffice to discourage people from committing violent acts in front of children.

### **Response:**

Many violent crimes are crimes of passion. It is hard to conceive that the bill's changes would have a deterrent effect on such crimes. Also, many people who are bent on committing an act of violence are not thinking of the length of jail time they might have to serve, as many believe that they will never be caught. Therefore, the bill may seem to add protection to children but in reality, it may have little to no effect.

### **Rebuttal:**

Though those arguments have some merit, it is also true that many assaultive crimes, especially domestic violence, are crimes of repetition, not of passion. Therefore, informative campaigns that put the public

on notice that violent crimes committed in the presence of children will be dealt with more harshly should have the deterrent effect hoped for. Further, it may deter some other crimes, such as crimes associated with drugs and gangs. Now, little thought is given to opening fire on someone when others, including children, are present – such as at a bus stop, movie theater, or playground. Again, getting the information out that witnessing violent acts can have such a profound effect on children may have a surprising effect on getting some people to rethink using violence as a means to solve a perceived problem.

### ***Against:***

The bill's effect would be to increase the minimum sentence that a violent offender would receive if he or she committed a violent crime in front of a child. In that regard, it would keep some violent felons in prison a bit longer than otherwise. However, it would do nothing to aid the children who were witnesses to the violent crimes. This is unfortunate, as current research shows that these children are at increased risk for stress related physical and emotional ailments, including post-traumatic stress disorder (the same disorder exhibited by some combat veterans). Without proper early intervention, these children are also at higher risk for committing violent crimes later in life.

Domestic violence shelters and programs have done a phenomenal job of assisting battered women to develop the needed skills and strength to break the cycle of violence, but not all shelters offer programs to address the specific needs of the children who witnessed the battering of their mothers. Yet, researchers have found that with proper intervention – such as emotional support from family members, age-appropriate therapy with mental health experts, and support from school staff – children can be remarkably resilient. Several intervention models have been successfully used in recent years to mitigate the effects on children of witnessing domestic violence or other violent crimes. These models could be easily adapted for use by social service agencies, domestic violence shelters, public and private schools, or community service organizations. Though funding for such programs is outside the scope of this bill, it is hoped this legislation would focus attention on directing funds for intervention programs that will aid those children who have witnessed violent crimes. As the old adage goes, an ounce of prevention is worth of a pound of cure. Proper funding of early intervention programs for children traumatized through witnessing violent

crimes could result in future reductions in public spending for prisons or mental health treatment.

### ***Against:***

Though the governor deemed the intent of the bill laudable, he vetoed the bill because it would undermine “the current statutory framework” developed by the Sentencing Commission. According to the governor's veto message, current law already provides for enhanced sentencing for violent offenders who cause psychological trauma to children which results in the children requiring professional treatment. In addition, current law allows a judge to upwardly depart from the sentencing guidelines if substantiated by certain compelling reasons, including the effect of the crime on children. Therefore, the governor wrote that the truth-in-sentencing law coupled with a judge's ability to depart from the guidelines “provides a firm and effective response to criminals who assault their victims in the presence of children.” Further, where the Sentencing Commission had to assess the weight of all offense variables on the population capacities of state and local correctional facilities, it appeared that the bill had not given adequate consideration to the effect on prison populations or on the state or local governments' abilities to incarcerate and effectively supervise offenders not subject to the bill's provisions.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.