

FELONY FOR REPEAT ABUSE

House Bill 4325 as enrolled
Sponsor: Rep. Tracey Yokich

Senate Bill 326 as enrolled
Sponsor: Senator Joanne G. Emmons

Second Analysis (7-25-94)
House Committee: Judiciary
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Despite a growing public awareness about domestic violence and its consequences for family members and society as a whole, and despite the enactment of various laws aimed at reducing domestic violence and providing shelter and services to victims of abuse, domestic violence continues at an alarming rate. Nationwide, some three to four million women annually are physically attacked by their husbands or partners; about four women each day are killed. Michigan's domestic violence figures are equally sobering: in 1991, there was a domestic violence-related homicide every five days. In 1985, local agencies reported 16,576 domestic violence offenses to the Michigan State Police; in 1990, that figure was 25,436; in 1991, 27,201, and in 1992, 29,891. While it is unclear to what degree these figures reflect an increase in reporting, rather than an increase in the rate of violence, it is clear that domestic violence remains a significant problem in this state.

One approach to dealing with domestic violence is to have strong laws against domestic assault. Such laws make it clear to batterers that society does not countenance such behavior, and make it harder for a male batterer to believe that it is his right to "discipline" his wife or that a physical assault may be justified by verbal provocation. Spousal abuse often occurs over a long period of time, and repeat offenses are a particular problem in domestic violence situations. However, the penal code does not distinguish domestic assault from other forms of assault, with the result that a repeat abuser may be prosecuted for simple assault, a 90-day misdemeanor. Further, as fingerprinting and arrest reporting requirements apply only to offenses punishable by at least 93 days in jail, prosecution as a simple misdemeanor may operate to shroud instances of repeat abuse. Amendments to create

special penalties for domestic abuse have been proposed.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Penal Code to distinguish between assaults where there was an element of domestic violence and assaults where there was no spousal relationship between the offender and the victim. Specifically, the bills would establish special penalties for assaults against current or former spouses, current or former household members, or people with whom the offender had a child. They also would increase the maximum fines for simple and aggravated assault, establish felony penalties for repeat domestic assault offenses, and make a first-offense simple assault that was a domestic assault punishable by up to 93 days in jail, rather than 90 days (this change to 93 days would cause statutory fingerprinting and criminal reporting requirements to apply). Prosecutors seeking enhanced sentences under the bills would have to note that intent on the charging document; the defendant's prior conviction(s) and his or her relationship to the victim would be established at sentencing by a preponderance of the evidence.

House Bill 4325 (MCL 750.81a and 750.81b) contains provisions on aggravated assault, and on procedures for seeking enhanced sentences for repeat domestic offenders. Senate Bill 326 (MCL 750.81) contains provisions on simple assault. The bills would take effect July 1, 1994, providing both were enacted. Further details follow.

Simple and aggravated assault. The maximum fine for ordinary (nondomestic) simple assault would be increased from \$100 to \$500, and the maximum fine

for ordinary (nondomestic) aggravated assault would be increased from \$500 to \$1,000. A simple assault would continue to also be punishable by up to 90 days in jail, and aggravated assault by up to one year.

Simple assault-domestic. A first-offense domestic assault would be a misdemeanor punishable by up to 93 days in jail, and/or a maximum fine of \$500. A simple domestic assault where there was a previous conviction for assaulting a spouse, household member, or person with whom the defendant had a child would be punishable by imprisonment by up to one year, and a fine of up to \$1,000. If the person had two or more prior convictions, the offense would be a felony punishable by imprisonment for up to two years and a fine of up to \$2,500. Previous convictions could be for simple assault (or a corresponding local ordinance), aggravated assault, domestic assault (simple or aggravated), assault with intent to murder, assault with intent to do great bodily harm, or assault with intent to maim.

Aggravated assault-domestic. A first-offense aggravated domestic assault would be a misdemeanor punishable by up to one year in jail and a fine of up to \$1,000. If the person had a previous conviction for assaulting a spouse, household member, or someone with whom the defendant had a child, the offense would be a felony punishable by imprisonment for up to two years and a fine of up to \$2,500. As with simple domestic assault, enhanced penalties would apply when the defendant had one or more prior convictions for any of a number of assaultive offenses against certain types of victims; prior convictions would not have to be for domestic assault as such.

FISCAL IMPLICATIONS:

With regard to House Bill 4325, the Senate Fiscal Agency (SFA) said that the bill could result in increased costs and increased revenue for state and local government. The SFA noted that the increased fines under House Bill 4325 and Senate Bill 326 could increase revenue to local units of government, depending on the number of convictions and the increased fine for each conviction. Most cases of simple or aggravated assault, being misdemeanors, are handled by the district court. Data on district court dispositions of simple and aggravated assault are not available, nor are data available on the number of violators who

may also have prior convictions. The increased allowable prison sentences for repeat offenders also could increase costs for the corrections department, depending on the number of convictions and the added prison sentence imposed for each conviction. (3-7-94)

ARGUMENTS:

For:

Many perpetrators of domestic violence fail to take responsibility for their actions and blame the victim; to the degree that society fails to hold these people accountable for their actions, it reinforces this belief and decreases the chances that the person will change his or her behavior. Domestic violence is not a private matter, and legal intervention can effectively get this message across. To this end, legislation has been proposed that would strengthen law enforcement response to domestic violence. The bills, part of this larger package, would further those aims by establishing enhanced penalties for repeated spouse abuse, and requiring spouse abuse arrests to be reported to the state police. More complete arrest records would help to ensure that courts considering probation were informed of an offender's background, and stronger sanctions for spouse abuse would make state policy on such offenses clear to all, including would-be batterers who might otherwise consider it a right to beat a spouse. Stiffer penalties for repeat offenses would help to ensure that the offender understands the seriousness of a first conviction.

Response:

Senate Bill 326 proposes to make first-offense domestic assault a 93-day misdemeanor, thereby ensuring that such arrests are fingerprinted and reported to the state police. However, to the degree that domestic assaults are processed as violations of local ordinances, repeat offenders could continue to be unidentified as such, because local ordinance penalties are limited to 90 days in jail.

For:

The bills would enact a long-overdue increase of the fines for simple and aggravated assault. Those fines have not been increased for some time, and are now inordinately low.

Against:

The bills would apply to current or former spouses or household members, and people who had a child

in common. However, this application may be in need of refinement to better capture the sorts of situations commonly considered to be domestic violence--situations where there was a romantic or familial relationship of unequal power between the people involved. Under the bills, the attacked household member could be a sibling or unrelated housemate of greater stature and strength, in which case the legislation would be overbroad. On the other hand, the legislation also arguably is too narrow because it fails to address relationships where there had been dating, but no child or cohabitation; the abuse that sometimes arises in dating relationships can, unfortunately, be just as deadly as spousal abuse.

Response:

Special laws for spousal abuse have developed at least in part because of an historical failure by the criminal justice system to respond adequately to in-family domestic assault. To the extent that this focus is lost, the law could be diluted. Also, to include dating relationships in the legislation would lead to difficulty in defining what constitutes a dating relationship.