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SFA



BILL ANALYSIS

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Senate Bills 103 and 551 (as passed by the Senate)
Sponsor: Senator Virgil C. Smith, Jr.
Committee: Judiciary

Date Completed: 12-20-99

RATIONALE

Some people believe that the current penalties for assisting a prisoner to escape are not sufficiently severe. Under the Michigan Penal Code, these penalties depend on the crime with which the prisoner was charged. If that offense was a misdemeanor, the person providing assistance may be incarcerated for up to one year. Otherwise, assisting a prisoner to escape is punishable by up to seven years' imprisonment. If a person has custody of prisoner and allows the prisoner to escape, the person is subject to the punishment to which the prisoner was sentenced. Concerns about these penalties arose in the aftermath of an escape in August 1994 from the Ryan Regional Correctional Facility in Detroit. In this incident, 10 prisoners escaped with assistance from individuals outside the prison, including some who threw bolt cutters and a shotgun over the prison fence. It has been suggested that harsher penalties should be enacted for this offense.

CONTENT

Senate Bill 103 would amend the Michigan Penal Code to revise the penalties for a person who assists a prisoner to escape, and for a person having custody of a prisoner who allows the prisoner to escape. In either case, the offense would be punishable by imprisonment for at least 10 but not more than 15 years, if the prisoner were charged with or convicted of a felony. Senate Bill 551 would amend the Code of Criminal Procedure to revise the sentencing guidelines classifications for aiding or allowing a prisoner to escape.

Senate Bill 551 is tie-barred to Senate Bill 103.

Senate Bill 103

The Penal Code prohibits the following:

- Bringing into a jail, prison, or similar place of confinement anything that is useful in assisting a prisoner to escape, with the intent

to facilitate an escape.

- Aiding or assisting a lawfully confined or detained prisoner to escape.
- Forcibly removing a prisoner from custody.

A violation is a felony punishable by imprisonment for up to seven years. If the prisoner is charged with a misdemeanor, however, the offense is a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$500. Under the bill, unless the prisoner was charged with a misdemeanor, a violation would be punishable by imprisonment for at least 10 years but not more than 15 years. If the prisoner were charged with a misdemeanor, the offense would be a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$500, or both.

Currently, if a jailer or other officer voluntarily allows a prisoner in his or her custody to escape, the jailer or officer is subject to the punishment to which the prisoner was sentenced. The bill provides, instead, that if the prisoner were charged with or convicted of a felony, the offender would be guilty of a felony punishable by imprisonment for at least 10 years but not more than 15 years. If the prisoner were charged with or convicted of a misdemeanor, the offense would be a misdemeanor punishable by up to one year in prison and/or a maximum fine of \$500.

Senate Bill 551

Legislative Analyst: S. Lowe

Under the Code of Criminal Procedure, aiding an escaping prisoner is categorized as a Class E felony against public safety, with a statutory maximum sentence of seven years' imprisonment. Under the bill, the offense would be a Class C felony against public safety, with a statutory maximum of 15 years' imprisonment, as proposed by Senate Bill 103.

Senate Bill 551 would delete the current sentencing guidelines provision for "voluntarily suffering a prisoner to escape", which is categorized as a felony against the public order with a variable statutory maximum penalty and no specified Class designation (because the penalty is dependent upon other factors). The bill would replace that with the felony of "allowing a prisoner to escape", which would be categorized as a Class C felony against public safety, with a statutory maximum of 15 years' imprisonment, as proposed by Senate Bill 103.

MCL 750.183 & 750.188 (S.B. 103)
777.16j & 777.18 (S.B. 551)

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

On August 21, 1994, 10 prisoners escaped from the Ryan Regional Correctional Facility after two people on the outside threw bolt cutters, a shotgun, and shotgun shells over the prison fence. Another person drove a getaway car, and changes of clothes may have been supplied by outside accomplices. In addition, there were suggestions at the time that the escapees might have had help from prison workers. All of the prisoners, except one who died shortly after the escape, were captured and no innocent person was injured, but the potential for danger was great. Although prisoners who escape or attempt to escape may be subject to additional punishment, the prisoners themselves might have little incentive not to flee, especially if they already are serving a life sentence. A more effective deterrent might be to punish those who help prisoners to escape. The current penalties for this offense, however, are adequate neither to deter violations nor to punish violators. The bill would rectify this shortcoming in the law by imposing a mandatory minimum sentence of 10 years on anyone who helped a convicted felon to escape.

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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.

FISCAL IMPACT

Senate Bill 103

The bill would increase costs for State government. In 1997, there were two convictions for violation of MCL 750.183--aiding a prisoner to escape, and two convictions for second violations of this section. There were no convictions for violation of MCL 750.188, allowing a prisoner to escape. Of those four convictions only one received a prison sentence. Also in 1997, one person (who may or may not have been convicted in 1997) was committed to a minimum sentence of three years for aiding a prisoner to escape. Assuming that a prisoner served the entire minimum sentence and that the prisoner would serve 10 years instead of three years under the bill, given that the average annual cost of incarceration is \$22,000, the cost to incarcerate the prisoner would increase by \$154,000.

Senate Bill 551

The bill would increase costs for State government. The bill would increase the minimum guidelines sentence for aiding a prisoner to escape by changing the crime from a Class E crime with a maximum minimum penalty of 24-38 months to a Class C crime with a maximum minimum penalty of 62-114 months. However, the companion bill, Senate Bill 103, would establish a statutory minimum sentence of 10 years in prison. Under the Code of Criminal Procedure, a sentence of a statutory minimum is not considered a departure from sentencing guidelines, and therefore may be assumed to be the penalty that will be used by judges. In 1997, there were two convictions for aiding a prisoner to escape and two convictions for second violations. Of those four convictions, one received a prison sentence. Also in 1997, one person was committed to prison for aiding a prisoner to escape, with a minimum sentence of three years. Assuming that a prisoner serves the entire minimum sentence and would serve 10 years instead of three years, given that the average annual cost of incarceration is \$22,000, in the long run the cost incurred for incarcerating one prisoner a year would increase by \$154,000.

Also, Senate Bill 551 would establish a crime class for allowing a prisoner to escape. In 1997, there were no convictions for this offense. Because the underlying crime presently determines the minimum sentence imposed, the fiscal impact of this section of the bill is indeterminate.

Fiscal Analyst: K. Firestone