



Senate Bills 930, 936, 942, 948, 949, 995, 996, and 997 (as introduced 12-11-01)

Sponsor: Senator Dan L. DeGrow (Senate Bill 930)
Senator Bill Bullard, Jr. (Senate Bill 936)
Senator Bev Hammerstrom (Senate Bill 942)
Senator Mike Goschka (Senate Bill 948)
Senator Loren Bennett (Senate Bill 949)
Senator Don Koivisto (Senate Bill 995)
Senator Dianne Byrum (Senate Bill 996)
Senator Burton Leland (Senate Bill 997)

Committee: Judiciary

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CONTENT

Senate Bill 930 would create the "Michigan Anti-Terrorism Act" as Chapter 83-A of the Michigan Penal Code. The bill would prescribe criminal penalties for various violations involving an "act of terrorism".

"Act of terrorism" would mean an act that would be a "violent felony" under Michigan law, whether or not committed in Michigan, that was dangerous to human life and intended to intimidate or coerce a civilian population or influence or affect the conduct of a government or a unit of government through intimidation or coercion. "Violent felony" would mean a felony in which an element was the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature involved a substantial risk that physical force against the person or property of another could be used in the course of committing the offense.

Senate Bills 936, 942, 948, 949, 995, 996, and 997 would amend the Code of Criminal Procedure and the Michigan Penal Code to do all of the following:

- Exclude communications between law enforcement officers in cases involving violations of Senate Bill 930 from restrictions on revealing grand jury testimony or exhibits.
- Provide criminal penalties for use of the Internet to disrupt certain functions of the State with the intent

- to commit a violation Senate Bill 930.
- Allow a prosecution for a violation of Senate Bill 930 that was punishable by life imprisonment, without a statute of limitations.
- Require that a sentencing court order a convicted person to reimburse a governmental entity for expenses incurred in relation to a conviction under Chapter 33 of the Penal Code (Explosives, Bombs, and Harmful Devices) or Senate Bill 930.
- Include in the sentencing guidelines convictions for a violation of Senate Bill 930, use of the Internet to commit a terrorism offense as proposed by Senate Bill 942, and certain offenses proposed by Senate Bill 950.
- Include a violation of Senate Bill 930 in the list of predicate offenses that constitute racketeering under the Penal Code, if committed or attempted for financial gain.

Senate Bills 936, 948, 949, 995, and 996 would amend the Code of Criminal Procedure and Senate Bills 942 and 997 would amend the Michigan Penal Code. Senate Bill 997 is tie-barred to Senate Bill 950 and five bills that have not been introduced to date. (Senate Bill 950 would amend the Michigan Penal Code to prohibit a person from threatening to violate, or falsely reporting a violation of, proposed Chapter 83-A. The offense would be punishable by imprisonment for up to 20 years and/or a maximum fine of \$20,000. The bill also would increase the sentence for making a false report of a violation of Chapter 33, or

threatening to violate that chapter.)

Senate Bill 930

Soliciting or Providing Material Support or Resources

The bill would prohibit a person from knowingly raising, soliciting, or collecting "material support or resources" intending that the support or resources be used, in whole or in part, to plan, prepare, carry out, or avoid apprehension for committing an act of terrorism against the United States or its citizens or knowing that the support or resources raised, solicited, or collected would be used by an organization that had been designated by the U.S. State Department as engaging in or sponsoring an act of terrorism.

The bill also would prohibit a person from knowingly providing material support or resources to a person, knowing that the person would use the support or resources, in whole or in part, to plan, prepare, carry out, facilitate, or avoid apprehension for committing an act of terrorism against the United States or its citizens.

A violation of either prohibition would be a felony punishable by up to 20 years' imprisonment.

"Material support or resources" would mean currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, any other kind of physical assets or intangible property, and expert services or expert assistance.

Making a Terrorist Threat

The bill would prohibit a person from knowingly threatening to commit, or causing to be committed, an act of terrorism with the intent to intimidate or coerce a civilian population or influence or affect the conduct of a government or unit of government, and thereby causing a reasonable expectation or fear of the imminent commission of an act of terrorism. A violation would be a felony punishable by up to 20 years' imprisonment.

The bill specifies that it would not be a defense to a prosecution for making a terrorist threat that the defendant did not have the intent or capability of committing the act of

terrorism or that the threat was not made to a person who was a subject or intended victim or target of the act.

Falsely Communicating a Terrorist Threat

The bill would prohibit communicating a threat of an act of terrorism that the offender knew to be false. A violation would be a felony punishable by up to 20 years' imprisonment.

Terrorism

The bill would prohibit a person from knowingly committing an act of terrorism within Michigan or, while outside of the State, knowingly committing an act of terrorism that took effect within Michigan or produced substantial detrimental effects within Michigan. Terrorism would be a felony punishable by imprisonment for life or any term of years. If death were caused by the terrorist act, however, the bill would require a penalty of imprisonment for life without the opportunity for parole.

Hindering Prosecution of Terrorism

A person would be guilty of "hindering prosecution of terrorism" if he or she knowingly committed an act that "renders criminal assistance" to a person who had committed an act of terrorism. Hindering prosecution of terrorism would be a felony punishable by imprisonment for life or any term of years if no death were caused by the act of terrorism committed by the person to whom the offender rendered criminal assistance. If death were caused by that act of terrorism, however, the bill would require a penalty of imprisonment for life without the opportunity for parole for hindering prosecution of terrorism.

"Renders criminal assistance" would mean that a person, with the intent to prevent, hinder, or delay the discovery or apprehension of, or the filing of a criminal charge against, another person whom he or she knew or believed had committed a violation of the bill or was being sought by law enforcement officials for committing a violation of the bill, or with the intent to assist a person in profiting or benefitting from committing a violation of the bill, did any of the following:

- Harbored or concealed that other person.
- Warned that other person of impending discovery or apprehension.
- Provided that other person with money,

transportation, a weapon, a disguise, fake identification documents, or any other means of avoiding discovery or apprehension.

- Prevented or obstructed, by means of force, intimidation, or deception, anyone from performing an act that might aid in the discovery or apprehension of that other person or in the filing of a criminal charge against that other person.
- Suppressed, by any act of concealment, alteration, or destruction, any physical evidence that could aid in the discovery or apprehension of that other person or in the filing of a criminal charge against that other person.
- Aided that other person to protect or expeditiously profit from an advantage derived from the crime.

Prosecution

A prosecution for a violation of the bill could be commenced at any time.

The bill states that it would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law arising out of the same criminal transaction as the violation of the bill.

Senate Bill 936

The Code of Criminal Procedure prohibits a person from publishing or making known to any other person any testimony or exhibits obtained or used, or any proceeding conducted, in connection with any grand jury inquiry, except as otherwise provided by law. This prohibition does not apply to communications between prosecuting officers for the purposes of presenting evidence before the grand jury, for the purpose of reviewing evidence presented to the grand jury for prospective prosecution, or for any other purpose involving the execution of a public duty.

The bill also would exclude from that prohibition communications between law enforcement officers in cases involving violations of Senate Bill 930.

Senate Bill 942

The bill would prohibit a person from using the Internet or a telecommunication system or other electronic system or device to disrupt the functions of the State's public safety, educational, commercial, or governmental

operations, with the intent to commit an offense prohibited by Senate Bill 930. A violation of Senate Bill 942 would be a felony punishable by up to 20 years' imprisonment, a maximum fine of \$100,000, or both.

"Internet" would mean that term as defined elsewhere in the Michigan Penal Code (MCL 750.145d) and in the Federal Communications Act (47 USC 230). The Federal provision defines "Internet" as "the international computer network of both Federal and non-Federal interoperable packet switched data networks".

"Device" would mean that term as defined elsewhere in the Michigan Penal Code (MCL 750.145d). Under that definition, "device" includes an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

"Electronic system" would mean a system relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, and would include a computer system or computer network, or digital broadcast system, or satellite network.

"Telecommunication system" would mean services offered to customers for the transmission of two-way interactive communications and associated usage.

Senate Bill 948

Under the Code of Criminal Procedure, an indictment for murder, first-degree criminal sexual conduct, or a violation of Chapter 33 of the Michigan Penal Code that is punishable by imprisonment for life may be found and filed at any time. (That is, there is no statute of limitations on the prosecution of those crimes.) Under the bill, a violation of Senate Bill 930 that was punishable by imprisonment for life would be included in the crimes for which there is no statute of limitations.

Senate Bill 949

As part of the sentence for certain offenses (including a violation or attempted violation of Chapter 33 of the Michigan Penal Code), in addition to any other penalty authorized by law, the Code of Criminal Procedure allows a court to order the convicted person to reimburse the State or a local unit of

government for expenses incurred in relation to that incident, including but not limited to expenses for an emergency response and for prosecuting the person.

The bill would remove a Chapter 33 violation from that provision. The bill provides that, as part of the sentence for a conviction of any violation or attempted violation of Chapter 33 or Senate Bill 930, in addition to any other penalty authorized by law, the court would have to order the convicted person to reimburse any "government entity" for expenses incurred in relation to that incident, including expenses for an emergency response and for prosecuting the person. ("Government entity" would mean the State, a local unit of government, or the U.S. government.)

Senate Bill 995

The bill would add felony violations proposed by Senate Bill 930 to the sentencing guidelines, as described in Table 1.

Table 1

| Crime | Class | Category | Maximum Sentence |
|--|-------|---------------|------------------|
| Soliciting Support for Terrorism | B | Public Safety | 20 years |
| Making Terrorist Threat | B | Public Order | 20 years |
| False Terrorist Threat | B | Public Order | 20 years |
| Terrorism Without Causing Death | A | Person | Life |
| Hindering Prosecution of Terrorism Without Causing Death | A | Person | Life |

Senate Bill 996

The bill would add to the sentencing guidelines use of the Internet or a telecommunication device to commit terrorism, as proposed by

Senate Bill 942. The offense would be a Class B felony against the public order, with a statutory maximum sentence of 20 years' imprisonment.

In addition, the bill would add to the sentencing guidelines making a threat or false report of terrorism, as proposed by Senate Bill 950. The offense would be a Class B felony against the public order, with a statutory maximum of 20 years' imprisonment.

The bill also would change the felony classification and statutory maximum sentence for making a threat or false report of an explosives offense, as proposed by Senate Bill 950. Under Senate Bill 996, that offense would be a Class E, rather than Class F, felony and the statutory maximum sentence for a first conviction would be five years' imprisonment rather than four.

Senate Bill 997

Under the Michigan Penal Code, "racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit, for financial gain, an offense listed in the definition. The bill would add to that list a violation of Senate Bill 930.

Proposed MCL 750.543a-750.543j (S.B. 930)
MCL 767.19f (S.B. 936)
Proposed MCL 750.411t (S.B. 942)
MCL 767.24 (S.B. 948)
769.1f (S.B. 949)
777.16z (S.B.995)
777.16t (S.B. 996)
750.159g (S.B. 997)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 930, 942, 995, and 996

These bills would have an indeterminate impact on State and local government. According to the FBI *Terrorism in the US 1999 Report*, from 1990-1999 there was only one incident of either domestic or international terrorism in the State of Michigan, and there are no data to indicate how many offenders could be convicted of the other new offenses. Table 2 shows the corresponding sentencing guideline minimum range for each of the offenses. Assuming that one offender was convicted of each new offense, went to prison, and received the longest minimum sentence,

it would cost the State \$5.5 million, given that the annual average cost of incarceration is \$25,000 per person.

Table 2

| Sentencing Guideline Minimum (in Months) | | |
|--|-----------|---------------------|
| Offense | Low Range | High Range |
| Threat or false report of an explosive or harmful device, substance, or material | 0-3 | 24-38 |
| Threat or false report of terrorism | 0-18 | 117-160 |
| Using Internet or telecommunication device to commit terrorism | 0-18 | 117-160 |
| Soliciting material support for terrorism or terrorist acts | 0-18 | 117-160 |
| Making a terrorist threat | 0-18 | 117-160 |
| Falsely communicating a terrorist threat | 0-18 | 117-160 |
| Terrorism without causing death | 21-35 | 270-450 or life |
| Hindering prosecution of terrorism without causing death | 21-35 | 270-450 or life |
| Terrorism causing death | | Life without parole |
| Hindering prosecution of terrorism causing death | | Life without parole |

Senate Bill 936

There are no data to indicate how many offenders would be convicted of publishing or making known to others testimony or evidence in connection with a grand jury inquiry concerning terrorism, without the proposed exemption. An offense is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. To the extent that the bill would exempt communications between law enforcement officers in cases involving violations of the proposed Michigan Anti-Terrorism Act, it should have no fiscal impact on State or local government.

Senate Bill 948

To the extent that it would increase the number of offenders convicted of offenses listed in the proposed Michigan Anti-Terrorism Act by providing for no statute of limitations

on those offenses, the bill could increase costs for State and local government.

Senate Bill 949

The bill would have an indeterminate impact on State and local units of government, depending on the number of convictions, government expenses incurred, and financial resources of defendants.

According to the Department of Corrections 1999 Statistical Report, there were 53 convictions for violations of Chapter 33 of the Michigan Penal Code.

Senate Bill 997

To the extent that it would add violations of the proposed Michigan Anti-Terrorism Act to the offenses that may be involved in racketeering, the bill potentially could increase costs to State and local government. Offenders convicted of racketeering receive a sentence with a minimum range of 0-18 to 117-160 months and are subject to probation or incarceration in a local or State facility. Local units would incur the cost of incarceration in a local facility, while the State would incur the cost of felony probation estimated at \$4.38 per day and the cost of incarceration in a state facility at an annual average cost of \$25,000. If one additional offender were convicted, were sentenced to prison, and received the longest minimum sentence, the cost to the State would be \$333,000.

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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.