

Senate Fiscal Agency  
 P. O. Box 30036  
 Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
 Fax: (517) 373-1986  
 TDD: (517) 373-0543

House Bill 5440 (Substitute H-2 as passed by the House)  
 House Bill 5441 (Substitute H-1 as passed by the House)  
 House Bill 5442 (Substitute H-4 as passed by the House)  
 House Bill 5443 (Substitute H-2 as passed by the House)  
 Sponsor: Representative Jennifer Faunce (House Bill 5440)  
           Representative Larry Julian (House Bill 5441)  
           Representative Jerry O. Kooiman (House Bill 5442)  
           Representative Raymond Basham (House Bill 5443)

House Committee: Criminal Justice  
 Senate Committee: Judiciary

Date Completed: 4-10-02

**CONTENT**

**House Bill 5440 (H-2) would amend the Michigan Penal Code to establish graduated felony penalties, based on the extent of injury, for assaulting or battering a peace officer whom the offender knew or had reason to know was performing his or her duties as an officer.**

**House Bill 5441 (H-1) would amend the Code of Criminal Procedure to include violations of House Bill 5440 (H-2) in the sentencing guidelines.**

**House Bill 5442 (H-4) would amend the Michigan Penal Code to revise provisions that prohibit obstructing, resisting, opposing, or assaulting certain officers in the performance of their duties, and to delete the current penalty for assaulting or committing bodily injury upon a peace officer.**

**House Bill 5443 (H-2) would amend the Code of Criminal Procedure to include in the sentencing guidelines felony violations proposed by House Bills 5442 (H-4), 5444 (H-2), and 5600 (H-3), and to make other revisions to the guidelines.** (House Bill 5444 (H-2), as passed by the House, would amend the Michigan Penal Code to prohibit and provide penalties for certain actions that would impede a peace officer's criminal investigation. House Bill 5600 (H-3), as passed by the House, would amend the Penal Code to make revisions similar to those proposed by House Bill 5442 (H-4).)

The bills would take effect on July 1, 2002. House Bill 5440 (H-2) is tie-barred to House Bill 5442; House Bill 5441 (H-1) is tie-barred to House Bill 5440; House Bill 5442 (H-4) is tie-barred to House Bills 5440 and 5600; and House Bill 5443 (H-2) is tie-barred to House Bills 5442, 5444, and 5600.

**House Bill 5440 (H-2)**

Under the bill, assaulting or battering a peace officer, when the offender knew or had reason to know that the officer was performing his or her duties as a peace officer, would be a felony punishable by a term of imprisonment, a fine, or both, as shown in Table 1.

Table 1

Violation	Max. Term of Imprisonment	Max. Fine
Assault or Battery	Two Years	\$1,000
Assault or Batter Inflicting Bodily Injury Requiring Medical Care	Four Years	\$5,000
Assault or Battery Inflicting Serious Injury	15 Years	\$10,000
Assault or Battery Causing Death	20 Years	\$20,000

The bill states that it would not prohibit an

individual from being charged with, convicted of, or punished for any other violation committed by that individual while violating the bill. A term of imprisonment for a violation of the bill could run consecutively to any term of imprisonment imposed for another violation arising out of the same transaction.

“Peace officer” would mean any of the following:

- A police officer of this State or a political subdivision of the State, including a Department of State Police motor carrier officer.
- A police officer of a junior college, college, or university who was authorized by the school’s governing board to enforce State law and the school’s rules and ordinances.
- A Department of Natural Resources or Department of Environmental Quality conservation officer.
- A U.S. Department of the Interior conservation officer.
- A sheriff or deputy sheriff.
- A constable.
- A peace officer of a duly authorized U.S. police agency, including a Secret Service or Department of Justice agent.

“Serious injury” would mean that term as defined in Section 479a of the Penal Code: A physical injury that is not necessarily permanent, but that constitutes serious bodily disfigurement or seriously impairs the functioning of a body organ or limb. Serious injury includes, but is not limited to, one or more of the following:

- Loss of a limb or the use of a limb.
- Loss of a hand, foot, finger, or thumb or the use of a hand, foot, finger, or thumb.
- Loss of an eye or ear or the use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state lasting more than three days.
- Measurable brain damage or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or hematoma.

**House Bill 5441 (H-1)**

The bill would add assaulting or battering a peace officer to the sentencing guidelines, as shown in Table 2.

Table 2

Violation	Felony Class	Crime Category	Stat. Max. Sentence
Assault/ Battery	G	Person	Two Years
Assault/ Battery Req. Med. Care	F	Person	Four Years
Assault/ Battery Causing Serious Injury	C	Person	15 Years
Assault/ Battery Causing Death	B	Person	20 Years

**House Bill 5442 (H-4)**

The Penal Code prohibits a person from knowingly and willfully obstructing, resisting, or opposing a sheriff, coroner, township treasurer, constable, or other officer or duly authorized person serving or attempting to serve or execute any process, rule, or order made or issued by a lawful authority. The bill would add endangering to that provision, refer to a “medical examiner” rather than a “coroner”, include in the violation actions against a judge, magistrate, probation officer, parole officer, prosecutor, city attorney, or court employee.

The Code also prohibits a person from resisting an officer enforcing an ordinance, law, rule, order, or resolution of a city council, village council, or a township board.

In addition, the Code prohibits a person from assaulting, beating, or wounding a sheriff, coroner, township treasurer, constable, or other duly authorized officer serving or attempting to serve or execute, or having served or attempted to serve or execute, any process, rule, or order. The bill would refer to a medical examiner rather than a coroner, delete references to a sheriff or constable, and refer to a duly authorized officer “other than a peace officer”.

Further, the Code prohibits a person from obstructing, resisting, opposing, assaulting, beating, or wounding any of the individuals included in the provisions described above or any other person authorized by law to maintain and preserve the peace, in his or her lawful acts, attempts, or efforts to maintain, preserve, and keep the peace. Under the bill, a person would be prohibited from obstructing, resisting, opposing, or endangering any of those individuals, including a peace officer. A person would be prohibited from assaulting, beating, or wounding any of those individuals, other than a peace officer.

Under the Act, a violation described above is a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both. The bill would retain this penalty, but provides that, if a violation inflicted bodily injury requiring medical attention or medical care, less than serious injury, it would be a felony punishable by up to four years' imprisonment, a maximum fine of \$5,000, or both.

The bill states that it would not prohibit an individual from being charged with, convicted

of, or punished for any other violation committed by that individual while violating the provisions described above. The sentencing court could order a term of imprisonment for a violation of those provisions to be served consecutively to any other term of imprisonment imposed for a violation arising out of the same criminal transaction.

Under the Code, forcibly assaulting or committing a bodily injury requiring medical care or attention upon a peace or police officer while the officer is engaged in making a lawful arrest, when the offender knows the person is a peace or police officer, is a misdemeanor punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both. The bill would delete this provision.

**House Bill 5443 (H-2)**

The bill would add to the sentencing guidelines felony violations proposed by House Bills 5442 (H-4), 5444 (H-2), and 5600 (H-3), as shown in Table 3.

Table 3

Violation	Felony Class	Crime Category	Stat. Max. Sentence	Proposed By
Resisting/Obstructing Inflicting Bodily Injury	G	Person	4 Years	HB 5442 & HB 5600
Resisting/Obstructing Inflicting Serious Injury	D	Person	10 Years	HB 5600
Resisting/Obstructing Causing Death	B	Person	20 Years	HB 5600
Harboring/Assisting/Suppressing Evidence	F	Public Order	4 Years	HB 5444
Harboring/Assisting/Suppressing Evidence in Felony Punishable by More Than 10 Yrs.	D	Public Order	10 Years	HB 5444

The bill also would revise existing guidelines offense descriptions to bring them into conformity with the proposed amendments. In addition, the bill would change the sentencing guidelines designation for interfering with a police investigation by committing a crime or threatening to kill or injure, from a Class F felony against a person to a Class D felony against a person.

Proposed MCL 750.81d (H.B. 5440)  
Legislative Analyst: Patrick Affholter

MCL 777.16d (H.B. 5441)  
750.479 & 750.479a (H.B. 5442)  
777.16x (H.B. 5443)

**FISCAL IMPACT**

The bills would result in an indeterminate

increase in costs to State and local government, by creating new offenses, increasing the penalties for existing offenses, and allowing consecutive sentencing.

House Bills 5440 (H-2) and 5441 (H-1)

According to the 1999 Department of Corrections Statistical Report, 330 offenders were convicted of violating MCL 750.479, which currently includes obstructing, resisting, opposing, assaulting, beating, or wounding both peace officers and several other types of officers. (This section would be amended by House Bill 5442 (H-4).) There are, however, no data that identify how many of those offenders were convicted specifically for assaulting or battering a peace officer. Under the bills, this particular offense would be a separate felony with penalties based on the extent of injury to the officer. Table 4 shows the sentencing guideline minimum ranges for the four new violations.

Table 4

Violation	Felony Class	Sentencing Guideline Minimum Range
Assault or Battery	G	0-3 months to 7-23 months
Assault or Battery Requiring Medical Care	F	0-3 months to 17-30 months
Assault or Battery Inflicting Serious Injury	C	0-11 months to 62-114 months
Assault or Battery Causing Death	B	0-18 months to 117-160 months

The Class G felony offenders would receive the same penalty as they would have received for violating MCL 750.479; therefore, the State would incur no additional costs. In the absence of data, if one assumes that 10 offenders would be convicted of each of the three felonies with increased penalties, sentenced to prison, and receive the longest minimum sentences, it would cost the State an additional \$4.9 million, at an average annual cost of incarceration of \$25,000.

The bills also could potentially increase costs by allowing the sentence for this violation to be served consecutively to another imposed

for a violation arising out of the same criminal transaction as the violation of the proposed Penal Code section.

House Bills 5442 (H-4) and 5443 (H-2)

As noted above, according to the 1999 Department of Corrections Statistical Report, 330 offenders were convicted of violating MCL 750.479, but there are no data to indicate how many offenders would be excluded if the reference to peace officers were eliminated, or to indicate how many would receive increased penalties under the new felonies classified by the extent of the inflicted injury. Table 5 shows the sentencing guideline minimum ranges for the new violation proposed in House Bill 5442 (H-4) as well as the related changes in House Bill 5600 (H-3).

Table 5

Violation	Felony Class	Sentencing Guideline Minimum Range
Resisting/Obstructing Inflicting Bodily Injury	G	0-3 months to 7-23 months
Resisting/Obstructing Inflicting Serious Injury	D	0-6 months to 43-76 months
Resisting/Obstructing Causing Death	B	0-18 months to 117-160 months

In the absence of data, if one assumes that 10 offenders would be convicted of each of the three felonies with increased penalties, sentenced to prison, and receive the longest minimum sentences, it would cost the State an additional \$4.1 million, at an average annual cost of incarceration of \$25,000.

The bills also could potentially increase costs by allowing the sentence for this violation to be served consecutively to another imposed for a violation arising out of the same criminal transaction as the violation of MCL 750.479, as well as by including violations against a judge, magistrate, probation officer, parole officer, prosecutor, city attorney, and court employee.

House Bill 5443 (H-2) also would establish sentencing guidelines for the two new violations proposed in House Bill 5444 (H-2).

There are no data to indicate how many offenders would be convicted of harboring, assisting, or suppressing evidence. Those convicted of doing so in a felony punishable by up to 10 years' imprisonment would be guilty of a Class F felony and receive a sentencing guideline minimum range of 0-3 months to 17-30 months, while those involved with a felony punishable by more than 10 years would be guilty of a Class D felony and receive a sentencing guideline minimum range of 0-6 months to 43-76 months. In the absence of data, if one assumes that 10 offenders would be convicted of each of the felonies, sentenced to prison, and receive the longest minimum sentences, it would cost the State \$2.2 million, at an average annual cost of incarceration of \$25,000.

In addition, the bills could increase State criminal justice costs by expanding the violation for retaliating for reporting a crime to include withholding evidence and preventing the reporting of a crime, as well as by expanding the violations for tampering with evidence to include offering false evidence. By changing the designation for interfering with a police investigation by committing a crime or threatening to kill or injure from a Class F felony to a Class D felony, House Bill 5443 (H-2) also would increase the sentencing guideline minimum range an offender could receive from 0-3 to 17-30 months to 0-6 to 43-76 months. For each offender convicted of this offense, the State would incur an additional cost of \$96,000, at an annual average cost of incarceration of \$25,000.

Fiscal Analyst: Bethany Wicksall

S0102\s5440sa

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.