



**House
Legislative
Analysis
Section**

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LEGALIZE CAPSICUM SPRAYS

House Bills 5475 and 5476 as introduced
First Analysis (11-27-90)

Sponsor: Rep. Ken Sikkema
Committee: Judiciary

THE APPARENT PROBLEM:

The Michigan Penal Code generally prohibits the manufacture or possession of any device designed to disable a person by releasing a substance; however, Public Act 346 of 1980 created an exception for CS-type tear gas self-defense sprays (mace sprays remain illegal for private use). More recently, another product has received attention; this product employs a derivative of the hot pepper plant (*Capsicum* sp.) as an active ingredient in a self-defense spray. That ingredient, oleoresin capsiicum or capsaicin, when sprayed in the face causes upper respiratory inflammation, coughing, and twitching of the eyelids; a strong dose causes the eyelids to swell shut. While a spray can temporarily incapacitate an assailant, it appears that no long-term adverse effects have been reported. The Federal Bureau of Investigation has approved the use of capsiicum sprays by its agents, and reports are that the product has been successfully used by a number of police agencies, including several in Michigan, to subdue aggressive humans and dogs. Backers of the product, including its Michigan distributor, are seeking its legalization for private use.

THE CONTENT OF THE BILLS:

House Bill 5475 would amend the Michigan Penal Code to permit the manufacture, sale, and possession of a self-defense spray device containing not more than one percent oleoresin capsiicum. The product would be subject to the same restrictions now applied to CS devices: the size would be limited to 35 grams; it would be a misdemeanor punishable by imprisonment for up to two years and a \$2,000 fine to use the spray other than to protect a person or property; improper use of the spray in the commission of a crime would be a reason for a judge to increase a sentence; and, it would be misdemeanor to sell the product to a minor.

MCL 750.224 and 750.224d

House Bill 5476 would amend Public Act 372 of 1927 to specify that a license from a concealed weapons licensing board would not be necessary for the sale or possession of a self-defense spray permitted under the penal code. (Public Act 372 at present exempts CS sprays from the license requirement that would otherwise apply.)

MCL 28.426a

Neither bill could take effect unless both were enacted.

FISCAL IMPLICATIONS:

Fiscal information on the bills was not immediately available, but that a license from a concealed weapons licensing board would not be necessary for the sale or possession of a self-defense spray permitted under the penal code. (Public Act 372 at present exempts CS sprays from the license requirement that would otherwise apply.)

ARGUMENTS:

For:

Like the CS sprays now permitted under Michigan law, capsiicum sprays can help people thwart criminal attack by incapacitating an assailant for a time sufficient to obtain help. Possession of

such devices also can provide a sense of security and reduce fear of crime. Without the availability of a self-defense spray, some people might carry knives or guns which not only present the possibility of severe injury or death to an attacker, but could have similar consequences for the person possessing them if wrested away during a struggle. People should not carry weapons for personal protection which would cause serious harm if used against themselves. Possession of a self-defense spray avoids this problem, because even if it were used on its owner it would cause no lasting damage.

While these benefits can also be claimed for CS sprays, capsiicum sprays have several advantages: they appear to be more effective with less risk of long-term effects, they have a longer shelf life, their effects do not linger on clothing as with tear gas, and they are said to be cheaper. It makes little sense to bar the sale and possession of capsiicum sprays when CS devices are permitted.

Against:

The possession of capsiicum sprays shares certain hazards with the possession of CS devices: the carrier can develop a false sense of security and fail to take sensible crime prevention precautions; the product can be taken away by an attacker and used against the victim; and an armed assailant may perceive a person reaching for a self-defense spray to be reaching for something more dangerous and respond with gun or knife. To be of any use, a self-defense spray would have to be carried in one's hand or be readily accessible; if carried in a pocket or purse, as would often happen, accessibility and thus usefulness would be limited.

Against:

With increased availability of self-defense sprays could come an increase in their use for offense, rather than defense. Self-defense sprays should not be viewed as innocuous; they are weapons that inflict severe pain for a period of time, even if they do not cause lasting harm. To make them readily available is unwise, especially as their use by a criminal can render a witness unable to visually identify a suspect.

Response: The penalties attached to the offensive use of self-defense sprays should help to deter their use for irresponsible or criminal purposes. Further, such devices do not generally appeal to criminals because they are not as effective as guns or knives in creating fear in victims, and they do not project the dangerous image that many criminals desire. However, even if self-defense sprays were occasionally used in the commission of crimes, this would be preferable to having some other more dangerous weapon, such as a gun or knife, used.

For:

Self-defense sprays of various sorts are being sold to Michigan customers by out-of-state mail order firms. By legalizing local sales of capsiicum spray, the bills would encourage local purchases that would generate sales tax revenue.

POSITIONS:

The Michigan Association of Chiefs of Police supports the bills.
(11-20-90)

The Michigan Sheriffs Association supports the concept of the bills. (11-20-90)

Luckey Police Products (the developers of Cap-stun capsicum spray) supports the bills. (11-19-90)

The Department of State Police is neutral on the bills. (11-20-90)

A representative of DeVenter Specialty Sales and Marketing Services (the Michigan distributor of Cap-stun capsicum spray) testified in support of the bills. (11-13-90)