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BILL ANALYSIS

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Senate Bill 102 (as passed by the Senate)

Sponsor: Senator George Z. Hart

Committee: Judiciary

Date Completed: 11-20-87

RATIONALE

The "felony-firearm law" within the Michigan Penal Code makes it a felony for a person to carry or be in possession of a firearm at the time he or she commits or attempts to commit a separate felony. Reportedly, there have been cases in which law enforcement officers were accused of a felony-firearm violation when charged with another felony committed while in the performance of their duties. Some argue that since the felony-firearm law is designed to disarm criminals, it is unfair and inappropriate to apply the law to police officers, whose official duties require them to be armed, and parole and probation officers, who can be armed with authorization. It also has been suggested that the potential for being charged under the felony-firearm law may have contributed to an increase in the number of officers killed or wounded in the line of duty, by discouraging them from using their weapon. Therefore, some believe that on-duty law enforcement officers should be exempt from the felony-firearm law.

CONTENT

The bill would amend the Michigan Penal Code to exempt on-duty law enforcement officers, probation officers, and parole officers from the section that makes it a felony for a person to carry or be in possession of a firearm at the time he or she commits or attempts to commit a felony. Under the bill, that provision would not apply to a law enforcement officer, probation officer, or parole officer who was authorized to carry a firearm while in the official performance of his or her duties, and who was performing those duties at the time the felony was committed. "Law enforcement officer" would mean a member of a duly authorized police agency or other organization of the United States, this State, or a city, county, township, or village of this State, regularly employed as such and responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this State.

MCL 750.227b

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS**Supporting Argument**

Although the felony-firearm law is designed to disarm criminals by providing additional and certain punishment for those who commit a crime while in possession of a firearm, case law clearly subjects police officers to the law. It makes no difference whether the weapon was

possessed legally or illegally, whether it was loaded or unloaded, or whether the weapon was used or a crime committed where a person was endangered by its use. Since the underlying felony need not involve use of a weapon, it could be any offense that has been legislated as a felony, such as fraud, embezzlement, or a check law violation. Since police officers must be armed as a necessary condition of their employment, it is inherently unfair to subject them to these provisions.

Further, while investigating an incident or attempting an arrest, a police officer might find it necessary to draw, display, or use his or her firearm. As a result of this action, the officer may later be convicted of a felony offense such as felonious assault or manslaughter. Senate Bill 102 would prevent the additional penalties of the felony-firearm law from being imposed on an officer whose only intention was to uphold the law.

Opposing Argument

Senate Bill 102 is unnecessary because it would be impossible for a police officer to commit a felony, and thereby trigger the felony-firearm provisions, while in the performance of his or her official duties, since official duties do not encompass any felonious act. The bill, therefore, would be a nullity because it would attempt to cover a situation that could not logically arise. Furthermore, police officers who are sworn to uphold the law should be subjected to the same punishment as anyone else when breaking the law. If anything, they should be held to a higher standard. Instead of simply making an empty gesture in support of the law enforcement community, the bill could remove an important control on those who are empowered to interfere in the lives of private citizens.

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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.

S.B. 102 (11-20-87)