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CRIMES WITH FIREARMS OR EXPLOSIVE/INCENDIARY DEVICES

House Bill 4641

Sponsor: Rep. Patricia Godchaux

House Bill 4642

Sponsor: Rep. Samuel Buzz Thomas

House Bill 4643

Sponsor: Rep. Gary Woronchak

Committee: Constitutional Law and Ethics

Complete to 5-7-99

A SUMMARY OF HOUSE BILL 4641, 4642, AND 4643 AS INTRODUCED 5-6-99

The bills would amend the Explosives Act of 1970 and sections of the Michigan Penal Code dealing with firearms and explosive or incendiary devices to add new felonies and penalties, and to increase the existing penalties, for certain existing felonies involving these weapons and devices.

House Bill 4641 would amend the Explosives Act of 1970 (MCL 29.45 and 29.55) to raise the minimum age for explosives permits (which currently is 18) to 21, and to increase the penalties for explosives crimes.

The Explosives Act of 1970 prohibits issuing a permit to people under 18, and requires a permit to handle, store, use, sell, buy, transport, or otherwise dispose of explosives. The act has various other requirements concerning the issuing of permits, a permit denial process, explosives dealer records, and storage of explosives. The act also prohibits handling explosives while drunk or under the influence of narcotics. Violations of the act's provisions are misdemeanors, with a mandatory fine of up to \$500 or imprisonment for up to one year or both.

The bill would change the mandatory misdemeanor penalties to permissible penalties and would add three new felonies to the act for selling or otherwise furnishing an explosive to an unlicensed individual, with the penalties increasing when the explosive was used in a crime or caused death or serious injury as the result of being used in a crime. It would be a felony, punishable by imprisonment for up to 4 years or a fine of up to \$2,500, or both, to sell explosives to an unlicensed individual. If the explosive were used in the commission of a crime, the person would be guilty of a felony punishable by imprisonment for up to 10 years or a fine of up to \$5,000, or both. If the explosive were used in a crime that caused death or serious injury ("serious

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impairment of a body function") to another individual, the person would be guilty of a felony punishable by imprisonment for up to 20 years or a fine of up to \$5,000, or both. A term of imprisonment for any of these new felonies could run consecutively to any other term of imprisonment imposed for another violation arising from the same transaction.

The bill would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law committed while selling explosives to an unlicensed individual. The bill also would add to the act the definition of "serious impairment of a body function" that appears in the Michigan Penal Code, where the term is defined to include, but not be limited to, the loss of a limb or use of a limb; the loss (or the loss of the use) of a hand, foot, finger, or thumb; the loss (or the loss of the use) of an eye or ear; serious visible disfigurement; a comatose state that lasts for more than three days; measurable brain damage or mental impairment; a skull fracture or other serious bone fracture; or subdural hemorrhage or subdural hematoma.

House Bill 4642. Currently, section 528a of the Michigan Penal Code, which was added to the code in 1986 to prohibit paramilitary training, prohibits teaching or demonstrating how to use or construct firearms, explosives or incendiary devices if the teacher or demonstrator knows or intends that that knowledge will be used in a "civil disorder" ("any public disturbance involving the use of any firearm, explosive, or incendiary device by 3 or more assembled persons which causes an immediate danger to, or which results in damage or injury to, any property or person"). The act also prohibits assembling ("with one or more persons") for the purpose of training or practicing with, or being taught, how to use firearms or explosive or incendiary devices, with the intent to use them in (or in furthering) a civil disorder. Violations of these provisions are felonies with unspecified penalties, which means at least 4 years' imprisonment and a fine of up to \$2,000.

The bill would amend this section of the penal code (MCL 750.528a) to specify that the prohibition applied to teaching or demonstrating "in person or through the use of any media" -- including, but not limited to computers ("the Internet, a computer, computer program, computer network, or computer system"), and to increase the penalties for violating this prohibition.

Violations would be felonies, with penalties based on the amount of damage resulting from the crime. The fine for a simple violation would be increased to \$2,500. If the firearm or explosive or incendiary device were used in a civil disorder, the violation would be a felony punishable by imprisonment for up to 10 years or a fine up to \$5,000, or both. If the use of the firearm or device caused death or serious injury ("serious impairment of a body function") to another individual, the penalty would be up to 20 years' imprisonment or a fine up to \$5,000, or both. Terms of imprisonment imposed for violating this section of the penal code (including the proposed additions) could run consecutively to any other term of imprisonment imposed for another violation arising from the same transaction.

The bill would not prohibit a person from being charged with, convicted of, or sentenced for violating any other law committed while violating this section of the penal code. The bill also would define "computer network," "computer program," "computer system," "device," and "Internet," as well as adding the definition of "serious impairment of a body function" that currently is in the penal code.

House Bill 4643. Public Act 206 of 1998 added a new explosives felony to the explosives chapter (Chapter 33) of the penal code. Under section 209a, having an explosive substance or device in a public place with the intent to "terrorize, frighten, intimidate, threaten, harass, or annoy" any other person is a felony punishable by up to 10 years imprisonment or a fine of up to \$10,000, or both. Public Act 207 of 1998 also amended Chapter 33 of the penal code to make it a separate felony, punishable by a concurrent term of imprisonment for up to 20 years, to commit a Chapter 33 (explosives) violation against a "vulnerable target" (defined as a child care or day care center, a health care facility or agency, a building or structure open to the general public, a place of religious worship, or a public, private, or religious school, college, or university) that resulted in death or serious injury to another person. The bill would amend these sections of the penal code (MCL 750.209a and 750.212a) to add three new felonies to section 209a, one new felony to section 212a, to increase the penalties for the existing felonies, and to add penalties for the new felonies.

More specifically, the section 209a felony of having an explosive substance or device in a public place with the intent to terrorize, frighten, intimidate, threaten, harass, or annoy any other person would be punishable by imprisonment for up to 15 years (instead of 10 years) or a fine of up to \$10,000 (as currently), or both. If the possession damaged someone else's property, the person would be guilty of a felony punishable by imprisonment for up to 20 years or a fine of up to \$15,000, or both. If the violation physically injured another person, other than the serious impairment of a body function, the violator would be guilty of a felony punishable by imprisonment for up to 25 years or a fine of up to \$20,000, or both. And if the violation caused serious impairment of a body function to another individual, the violator would be guilty of a felony punishable by imprisonment for life or any term of years or a fine of up to \$25,000, or both.

If a person violated Chapter 33 of the penal code and the violation were committed in, or directed at, a vulnerable target, the person would be guilty of a felony (as currently) for life or any term of years (instead of up to 20 years). If the violation resulted in death or serious impairment of a body function of another individual, the violator would be guilty of a felony and would be imprisoned for life without the possibility of parole.

In chart form, the crimes and penalties can be summarized as follows:

MCL	Current crime	Current penalty	Proposed crime	Proposed penalty
29.55 (Explosives Act of 1970) HB 4641	Violation of the act's provisions: <i>misdemeanor</i>	\$500/1 year	(No change)	(No change)
			Sell or furnish explosives to unlicensed people; different <i>felony</i> depending on harm done	* 4 years/\$2,500 * 10 years/\$5,000 if used in crime * 20 years/\$5,000 if used in crime with resulting death or serious injury
750.528a (Penal code ban on paramilitary training) HB 4642	Violation of the antiparamilitary provisions: <i>felony</i>	Unspecified (4 years/\$2,000)	Same violation, but different <i>felony</i> depending on harm done	* 4 years/\$2,500 * 10 years/\$5,000 if used in civil disorder * 20 years/\$5,000 if used in civil disorder and causes death or serious injury
750.209a (Penal code explosives chapter 33) HB 4643	Possess explosive substance/device in public with intent to terrorize: <i>felony</i>	10 years/\$10,000	Same violation, but new <i>felonies</i> based on resulting harm	* 15 years/\$10,000 * 20 years/\$15,000 if property damage * 25 years/\$20,000 if physical injury * Life/\$25,000 if serious injury results * Life without parole/\$40,000 if death results
750.212a (Penal code explosives chapter 33) HB 4643	Violation of explosives chapter involving a vulnerable target: <i>felony</i>	Concurrent term of up to 20 years	Same violation, but new <i>felony</i> if death/serious injury results	* Life * Life without parole if death or serious injury results

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.