

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

SFA



BILL ANALYSIS

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

House Bill 4641 (Substitute H-1 as reported without amendment)
House Bill 4642 (Substitute H-2 as reported without amendment)
House Bill 4643 (Substitute H-1 as reported without amendment)
Sponsor: Representative Patricia Godchaux (House Bill 4641)
Representative Samuel Thomas III (House Bill 4642)
Representative Gary Woronchak (House Bill 4643)

House Committee: Constitutional Law and Ethics
Senate Committee: Judiciary

Date Completed: 6-9-99

RATIONALE

On April 20, 1999, two students at Columbine High School in Littleton, Colorado, went on a rampage at their school with firearms and explosives. Before killing themselves, they killed 12 students and one teacher at the high school and injured numerous other individuals. In the wake of this incident, many schools nationwide, including several in Michigan, reportedly saw an increase in bomb threats and crudely assembled bombs. The Littleton experience, along with the subsequent threats in Michigan and elsewhere, has spurred a concern over teenagers' apparent ease of access to guns and explosives as well as information about how to manufacture, obtain, and use explosives. Some people believe that access to explosives should be limited to those who are at least 21 years old, information regarding the use of firearms and explosives should be more tightly restricted, and penalties for certain explosives offenses should be enhanced depending on circumstances surrounding the violations.

CONTENT

House Bill 4641 (H-1) would amend the Explosives Act to increase the minimum age for an explosives permit from 18 to 21; and to establish felony penalties for furnishing an explosive to an unlicensed person, which would increase if the explosive were used to commit a crime and caused death or a "serious impairment of a body function". **House Bill 4642 (H-2)** would amend the Michigan Penal Code to prohibit the use of the Internet or a computer to teach or demonstrate the use of a firearm or explosive for use in a civil disorder; and to specify penalties for unlawfully teaching or demonstrating a firearm or explosive, or unlawfully assembling with others to practice or train with a firearm or explosive. **House Bill 4643 (H-1)** would amend Chapter 33 of the Michigan Penal Code (which governs explosives offenses) to establish increased

penalties for the possession of an explosive in a public place with the intent to frighten or harass, and for an explosives offense directed at a "vulnerable target". The bills would take effect on August 1, 1999.

Under all three bills, "serious impairment of a body function" would include, but not be limited to, one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a hand, foot, finger, or thumb, or use of a hand, foot, finger, or thumb.
- Loss of an eye or ear or 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 subdural hematoma.

Under the Michigan Penal Code, "vulnerable target" means any of the following:

- A child care center or day care center, as defined in the child care licensing Act.
- A health care facility or agency, as defined in the Public Health Code.
- A building or structure open to the general public.
- A church, synagogue, mosque, or other place of religious worship.
- A public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade 1 through 12.
- An institution of higher education.

House Bill 4641 (H-1)

Under the Explosives Act, a person must obtain a permit from an issuing officer (an officer of a local police or sheriff's department or a designated officer of the State Police) in order to handle, store, use, sell, purchase, transfer, transport, or otherwise dispose of an explosive. A permit may not be issued to an applicant who is not at least 18 years old on the date of application, or to a person who has been adjudged insane, unless subsequently restored by court order to full mental competency and capacity. The bill would increase the minimum age to 21.

Currently, a violation of the Act is a misdemeanor punishable by imprisonment for up to one year and/or a fine of up to \$500. The bill would retain that penalty, but provides that it would be a felony for a person to sell or otherwise furnish an explosive to an individual he or she knew or had reason to know was not licensed under the Act. The offense would be punishable by imprisonment for up to four years and/or a fine of up to \$2,500, except as follows:

- If the explosive were used in the commission of a crime, the offense would be punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000.
- If the explosive were used in the commission of a crime and the use of the explosive caused death or serious impairment of a body function to another individual, the offense would be punishable by imprisonment for up to 20 years and/or a fine of up to \$5,000.

The bill specifies that this section of the Act would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law committed by that individual while violating this section. Also, a term of imprisonment imposed for a violation of this section could run consecutively to any prison term imposed for another violation arising from the same transaction.

House Bill 4642 (H-2)

The Penal Code prohibits a person from teaching or demonstrating to another individual the use, application, or construction of a firearm or an explosive or incendiary device, if the person knows, has reason to know, or intends that what is taught or demonstrated will be used in, or in furtherance of, a civil disorder. The bill would prohibit this activity either in person or through the use of any media, including the Internet, a computer, computer program, computer network, or computer system. A violation through the use of any media would occur if the communication originated and/or terminated in this State.

The bill specifies that a violation or attempted violation through the use of any media would not apply to an Internet service provider or computer network service provider who did not have prior actual knowledge that what was taught or demonstrated was intended to be used in, or would be used in, or in furtherance of, a civil disorder.

The Code also prohibits a person from assembling with one or more people for the purpose of training with, practicing with, or being instructed in the use of a firearm, or any explosive or incendiary device, if the person intends to use a firearm or device in, or in furtherance of, a civil disorder. A violation of this prohibition, or the prohibition involving teaching or demonstration, is a felony. (The Code does not specify a penalty for this offense, which means that it is punishable by imprisonment for up to four years and/or a fine of up to \$2,000.)

The bill specifies that a violation would be a felony punishable by imprisonment for up to four years and/or a fine of up to \$2,500, except as follows:

- If the firearm, explosive, or incendiary device were used in the commission of a civil disorder, the offense would be punishable by imprisonment for up to 10 years and/or a maximum fine of \$5,000.
- If the firearm, explosive, or incendiary device were used in the commission of a civil disorder and the use of the firearm, explosive, or device caused death or serious impairment of a body function to another individual, the offense would be punishable by imprisonment for up to 20 years and/or a maximum fine of \$5,000.

The bill specifies that this section of the Code would not prohibit a person from being charged with, convicted or, or sentenced for any other violation of law committed by that individual while violating this section. Also, a term of imprisonment imposed for a violation of this section could run consecutively to any prison term imposed for another violation arising from the same transaction.

House Bill 4643 (H-1)

Currently, under Chapter 33 of the Penal Code, it is a felony punishable by imprisonment for up to 10 years and/or a maximum fine of \$10,000 to possess an explosive substance or device in a public place with the intent to terrorize, frighten, intimidate, threaten, harass, or annoy any other person. Under the bill, the offense would be a felony punishable by imprisonment for up to 15 years and/or a fine of up to \$10,000, except as follows:

- If the violation damaged the property of another person, it would be punishable by imprisonment for up to 20 years and/or a maximum fine of \$15,000.
- If the violation caused physical injury to another individual, other than serious impairment of a body function, it would be punishable by imprisonment for up to 25 years and/or a fine of up to \$20,000.
- If the violation caused serious impairment of a body function to another individual, it would be punishable by imprisonment for life or for any term of years and/or a fine of up to \$25,000.
- If the violation caused the death of another individual, the offender would have to be imprisoned for life without eligibility of parole and could be fined up to \$40,000, or both.

In addition, if a violation of Chapter 33 is committed in or is directed at a vulnerable target, and the violation results in the serious impairment of a body function or death of another individual, the offense is a felony punishable by imprisonment for up to 20 years. The bill provides, instead, that if a violation of Chapter 33 were committed in or directed at a vulnerable target, the offense would be a felony punishable by imprisonment for life or any term of years. If the violation resulted in the death or serious impairment of a body function of another individual, the offender would have to be imprisoned for life without parole eligibility.

MCL 29.45 & 29.55 (H.B. 4641)
750.528a (H.B. 4642)
750.209a & 750.212a (H.B. 4643)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The recent violent incident in Littleton, Colorado, and others like it illustrate that it may be too easy for youths to acquire firearms and explosives and to obtain information relating to those weapons and their use. It is imperative that Michigan tighten the legal restrictions on teens' access to firearms and explosives and strengthen prohibitions against supplying minors with those types of weapons. Also,

the impropriety of using explosives to cause civil disorder should be emphasized through enhanced sentences for that offense, particularly when it results in property damage, serious injury, or death.

In addition, information on how to manufacture and use crude explosives, such as bottle or pipe bombs, apparently is quite accessible, especially with the development of the Internet. With the increased popularity of this medium, it is necessary to include use of computers and the Internet in statutory prohibitions against teaching or demonstrating the use, application, or construction of a firearm or an explosive or incendiary device for use in or in furtherance of a civil disorder.

Further, in order to deter the use of explosives to terrorize, frighten, intimidate, threaten, harass, or annoy others, penalties for that offense should be enhanced. If people were aware of the stiff sanctions for this behavior, "copycat" activities that seemed to be so prevalent following the Littleton massacre could be avoided. Also, penalties for various firearm and explosives violations should be graduated to provide increasingly severe punishment in cases involving serious injury or death.

Response: It seems apparent that incidents like what occurred in Colorado are based upon a more complex societal problem than an unfettered ability to acquire guns and explosives. Until that problem is adequately addressed, enhanced penalties and tighter restrictions on access would do little to deter the efforts of an individual determined to commit similar crimes.

Opposing Argument

The age of majority in Michigan is 18. Upon attaining that age, a person may legally vote, marry, own property, make contracts, and accumulate debt. Restricting permits for explosives' use, which typically are granted for occupational reasons, would merely hinder some young adults' ability to pursue their livelihood. Chances are that someone intending to do harm to others with explosives would not bother to secure a legal permit for the possession and use of those devices, so the bills likely would have no deterrent effect on the type of sabotage that occurred in conjunction with the Colorado killings.

Response: Some people who reach the age of 18 are still high school students. If raising the minimum age for a permit to obtain and use explosives kept one bomb, or the information necessary to develop a bomb, out of a high school, then the revision would be worthwhile.

Legislative Analyst: P. Affholter

FISCAL IMPACT

House Bill 4641 (H-1)

The bill would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many people under the age of 21 years or adjudged insane could apply for or be granted a license. The bill would retain the current penalty of a maximum sentence of one year and/or a fine of \$500. Nor are there data to indicate how many people would be subject to the graduated penalties for furnishing an explosive to someone who was not eligible for licensure under this Act.

House Bill 4642 (H-2)

The bill would have an indeterminate fiscal impact on State government.

In 1997, no one was convicted of teaching or demonstrating how to build an explosive device. There are no data available to indicate how many more people would be convicted of teaching or demonstrating how to build a firearm or explosive device with the inclusion of media such as the Internet. The penalty for conviction under this section would result in a maximum sentence of four years in prison and/or a fine \$2,500.

In addition, there are no data to indicate how many offenders would be convicted of demonstrating, or assembling to demonstrate, how to build or use an explosive device or firearm that was used in the commission of civil disorder. The maximum penalty for this crime would be 10 years and/or a fine of \$5,000, or 20 years and/or \$5,000 if the crime resulted in death or serious impairment of a body function.

House Bill 4643 (H-1)

The bill would have an indeterminate fiscal impact on State government.

There are no data available to indicate how many offenders have been convicted of possessing an explosive device in a public place to terrorize, frighten, intimidate, threaten, harass, or annoy since the law was enacted in 1998. For violation of this section, the bill would increase the maximum sentence from 10 years to 15 years and provide graduated penalties up to life imprisonment without parole based on the target of the damage.

Fiscal Analyst: K. Firestone

H9900\4641a

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.