

Legislative Analysis



POSSESSION OF EMD DEVICES

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Senate Bill 1328 as passed by the Senate

Sponsor: Sen. Alan L. Cropsey

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (7-14-04)

BRIEF SUMMARY: The bill would authorize local correctional officers, with authorization from the county sheriff, to possess and use electro-muscular disruption (EMD) devices and would also define “peace officers” for the purpose of who is authorized to use such devices.

FISCAL IMPACT: The bill would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Public Act 709 of 2002, among other things, allowed the possession and use of an electro-muscular device (EMD) by certain authorized professionals associated with keeping the peace or making arrests and for airline pilots and crew members, as long as the individual was properly trained in the safe operation of the device. EMDs use a high voltage shock to immobilize an attacker by disrupting the signals of the nervous system from the brain to the muscles – as compared to a stun gun which uses pain to immobilize a person. Studies show no lasting harm to systems of the body, and have shown a significant decrease in injuries to officers as well as to the suspects or prisoners being subdued as compared to using standard techniques (pepper spray, batons, physical force, etc.).

Although Public Act 709 authorized correctional officers employed by the Department of Corrections (with written authorization from the director), and even court personnel such as court officers and bail agents, to possess and use EMDs, it did not include the local correctional officers who staff county jails. Reportedly, local correctional officers have few tools available to them when attempting to subdue a prisoner. The challenges facing local correctional officers in managing the prisoner population in a county jail include inmates who may still be under the influence of controlled substances, those beginning the withdrawal process from controlled substances and/or alcohol, or who have undiagnosed (and therefore untreated) mental illnesses. In addition, the ratio of prisoners to correctional officers is much higher in a county jail. With studies showing an impressive reduction in injuries to officers and prisoners when EMDs are used in place of traditional techniques, local correctional officers have expressed a desire to be included in the list of individuals who may possess and use EMDs.

Also, although Section 224a of the Michigan Penal Code does authorize peace officers to possess and use EMDs, the term is not specifically defined as it relates to EMD use. It has been recommended that the term be defined as it applies to EMDs.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to allow a local corrections officer authorized by the county sheriff to possess and reasonably use a device that used electro-muscular disruption (EMD) technology, while performing his or her official duties. The bill also would define "peace officer" for purposes of possession and use of an EMD device.

The penal code prohibits the sale or possession of a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed that is designed to incapacitate temporarily, injure, or kill. That provision, however, does not prohibit the possession and reasonable use of an EMD device by a peace officer, a Department of Corrections (DOC) employee authorized in writing by the DOC director, a probation officer, a court officer, a bail agent authorized under the code, a licensed private investigator, or an aircraft pilot or aircraft crew member, who has been trained in the use, effects, and risks of the device, while performing his or her official duties. The bill would add a local corrections officer authorized in writing by the county sheriff to the list of people who may possess and reasonably use an EMD device. "Local corrections officer would mean that term as defined in the Local Corrections Officers Training Act (MCL 791.532).

In addition, the bill would define "peace officer" as a police officer or public safety officer of the state or a political subdivision of the state, including motor carrier officers and Capitol security personnel; a sheriff or sheriff's deputy; a junior college, college, or university police or public safety officer who is authorized by the institution's governing board to enforce state law and the school's rules and ordinances; a township constable; a city, village, or township marshal; a state conservation officer; a law enforcement officer of another state, a political subdivision of another state, or a junior college, college, or university of another state, substantially corresponding to a law enforcement officer in Michigan; or a federal law enforcement officer.

MCL 750.224a

BACKGROUND INFORMATION:

For more information on electro-muscular disruption (EMD) devices and the initial legislation authorizing their possession and use, see the House Legislative Analysis Section's analysis of House Bill 6028, which became Public Act 709 of 2002, dated 1-3-03.

ARGUMENTS:

For:

The work of a local correctional officer is similar to that of an employee of the Department of Corrections. Though county jails typically house prisoners convicted of misdemeanor or minor felony offenses, they also house murderers, rapists, arsonists, etc. who are awaiting trial and sentencing. The local correctional officer also is confronted with the challenge of managing prisoners who may still be in the throes of an addiction or experiencing a mental health crisis. In short, jail staff need all the tools available to manage an unruly prisoner, stop fights between inmates, or prevent an inmate from injuring himself or herself or others. Electro-muscular disruption (EMD) devices have a very good record of being a safe and effective tool to subdue or manage a prisoner as compared to traditional techniques using force, batons, or chemical sprays.

The bill would also identify the individuals who would be covered by the term “peace officers”. Currently, there is no single definition of “peace officer” contained in law. Rather, the term is defined as it relates to specific duties and functions throughout various statutes and therefore can differ from provision to provision.

POSITIONS:

A representative of the Court Officers, Deputy Sheriffs and Process Servers of Michigan testified in support of the bill. (7-14-04)

A representative of the Deputy Sheriffs Association of MI/Kent County indicated support for the bill. (7-14-04)

Representatives of the Michigan State Police indicated support for the bill. (7-14-04)

A representative of the Oakland County Sheriffs Office indicated support for the bill. (7-14-04)

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■ 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.