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BILL ANALYSIS

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Senate Bill 1328 (as enrolled)  
Sponsor: Senator Alan L. Cropsey  
Committee: Judiciary

Date Completed: 8-11-04

### **RATIONALE**

The Michigan Penal Code has banned the possession and sale of so-called "stun guns" since 1976. The ban refers to a portable device or weapon from which an electrical current, impulse, wave, or beam designed to incapacitate temporarily, injure, or kill, may be directed. This prohibition does not apply to the possession and reasonable use of a device that uses electro-muscular disruption (EMD) technology by a peace officer, an authorized Department of Corrections (DOC) employee, and other specified individuals who have been trained in the use and risks of the device, while performing their official duties. Some people believe that local corrections officers also should be included in this exception, and that "peace officer" should be defined in that provision to include various law enforcement personnel, including State Police motor carrier officers and Capitol security personnel.

### **CONTENT**

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 uses EMD technology, while performing his or her official duties, if the officer had been trained in the use, effects, and risks of the device. ("Local corrections officer" would mean that term as defined in the Local Corrections Officers Training Act (MCL 791.532).)

The bill also would define "peace officer" for purposes of possession and use of an EMD device. "Peace officer" would mean 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**

At the time the ban against stun guns was enacted in 1976, an exception was made for the delivery to or possession by the Department of State Police or any agency or laboratory with prior written approval of, and on conditions established by, the Department Director for the purpose of testing such a device or weapon. Public Act 709 of 2002 amended that provision of the Penal Code to provide that the ban does not prohibit the possession and reasonable use of an EMD device by a peace officer, a Department of Corrections 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 crew member, who has been trained in the use, effects, and risks of the device, while performing his or her official duties. (Also, Public Act 536 of 2002 included the stun gun ban in a section of the Penal Code under which peace officers, DOC employees authorized by the Director, and certain

military personnel are exempt from certain weapons violations.)

### **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 ability to use EMD devices, or “tasers” as they are also known, would help local corrections officers control situations in which a prisoner has to be restrained. The devices, which emit a high voltage burst of electricity that temporarily immobilizes an individual, are increasingly being used by law enforcement and corrections officers both in Michigan and throughout the country.

Peace officers, DOC employees authorized by the DOC Director, court officers, and some civilians already may use tasers under the exception to the ban. It would be reasonable and prudent to allow properly trained local corrections officers to use them in the course of their official duties, if authorized to do so by the county sheriff.

#### **Supporting Argument**

Although the exception to the stun gun ban allows a peace officer to use an EMD device in the course of his or her duties, if the officer is properly trained in the use, effects, and risks of the device, that provision does not define the term “peace officer”. While a peace officer generally is considered to be a sworn local, State, or Federal law enforcement officer, it would be beneficial to state explicitly who may use a taser under the peace officer exception. All of the officers included in the bill’s definition are generally thought of as “peace officers”. They are authorized to enforce general criminal laws, are required to be certified by the Michigan Commission on Law Enforcement Standards, and are trained and permitted to carry firearms and use deadly force if necessary.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

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

Fiscal Analyst: Bethany Wicksall

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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.