

POLICE BADGES AND UNIFORMS

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Senate Bill 444 (Substitute H-1)

Sponsor: Sen. Michelle A. McManus

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (11-28-05)

BRIEF SUMMARY: The bill would prohibit the unauthorized use, possession, sale, display, exhibition, furnishing, or wear of police uniforms, patches, and badges.

FISCAL IMPACT: The bill would have no fiscal impact on the state, and an indeterminate fiscal impact on local units of government. Misdemeanor offenders fall under the purview of local units of government, and depending on how the bill affected the numbers of misdemeanor convictions and associated sanctions imposed, it could increase local costs of misdemeanor probation or incarceration in the county jail, both of which vary from county to county. Any increase in penal fine revenue could benefit local libraries, which are the constitutionally-designated recipients of such revenue.

THE APPARENT PROBLEM:

Under the Michigan Penal Code, it is against the law to perform the duties of a peace officer or represent oneself as a peace officer. It is also against the law to wear, exhibit, display or use for any purpose the badge or uniform prescribed for the state police or to possess or sell the badge of any law enforcement agency. However, several recent incidents highlight continuing problems with people violating these prohibitions.

On a recent trip to a mall, the sheriff for Oakland County found a store that sold patches, badges, and other paraphernalia nearly identical to official patches and badges worn by state police officers and other law enforcement officers. A few weeks ago, two men dressed as Oakland County sheriffs deputies in a tan car equipped with a red flashing light pulled a car over and robbed the driver. A man in the metro-Detroit area recently outfitted himself in a uniform closely resembling the traditional black trousers and jacket worn by many law enforcement officers, complete with an official-looking badge and proclaimed himself a chaplain working with the Oakland and Wayne County sheriffs offices. And, people have operated scams by dressing as police officers or flashing police-type badges and shields in order to collect for charities that may never see the money collected or that do not exist.

As a result, some feel that the penalty for possessing or selling a badge of a law enforcement agency should be increased, and that the prohibition should be expanded to include patches and uniforms as well as prohibiting the acts of wearing, exhibiting, displaying, or using the badges, patches, and uniforms.

THE CONTENT OF THE BILL:

In general, the Michigan Penal Code prohibits a person from selling, furnishing, or possessing the badge (or facsimile of the badge) of any law enforcement agency. Certain exceptions apply.

Senate Bill 444 would amend the code to extend the current prohibition to apply also to patches and uniforms of law enforcement agencies and would also prohibit the act of wearing, exhibiting, displaying, or using the badge, patch, or uniform unless the act fell within one of the specified exemptions. Moreover, under the bill, a retirement badge would only continue to be exempt from the penalties if it were in the possession of the retired law enforcement officer. Similarly, the badge, patch, or uniform of a deceased officer could only be in the possession of the officer's spouse, child, or next of kin to continue to be automatically exempted. A new exemption would be created for an actor who was wearing the badge, patch, uniform, or facsimile while actually engaged in the acting profession. "Facsimile" would include both an exact replica and a close imitation of an existing item.

Currently, a violation is a misdemeanor punishable by a fine of not more than \$100. Senate Bill 444 would increase the penalty to include imprisonment for not more than 93 days, a fine of not more than \$500, or both. A charge under or conviction or punishment for a violation of this prohibition would not prevent a person from being charged with, convicted of, or punished for any other violation of law that arose from the same transaction.

The bill would also add a new section to the code to prohibit a person, other than a peace officer, from wearing or displaying the emblem, insignia, logo, service mark, or other law enforcement identification of any law enforcement agency, or the facsimile of any of those items, if either of the following applied:

- The person represented himself or herself to another as being a peace officer. "Peace officer" is defined in Section 215 of the code.
- The manner in which a law enforcement agency's emblem, insignia, logo, service mark, or other identification was worn or displayed would lead a reasonable person to falsely believe that the law enforcement agency was promoting or endorsing a commercial service or product or a charitable endeavor.

"Law enforcement identification" would mean any identification containing the words "law enforcement" or similar words, including, but not limited to, agent, enforcement agent, detective, task force, fugitive recovery agent, or any combination of names that gave the impression that the bearer was in any way connected with the federal government, state government, or any political subdivision of a state government. "Law enforcement identification" would not include "bail agent" or "bondsman" when used by a bail agent or a bondsman operating under the provisions of Section 167b of the code.

The penalty for a violation would also be a misdemeanor punishable by up to 93 days imprisonment, a fine of \$500, or both. A charge under or conviction or punishment for a violation of this prohibition would not prevent a person from being charged with, convicted of, or punished for any other violation of law that arose from the same transaction.

The bill would not apply to a person appointed by a Michigan court to serve as a bailiff or court officer under Section 8321 of the Revised Judicature Act or under MCR 3.106 or 2.103 of the Michigan Court Rules.

The bill would take effect January 1, 2006.

MCL 750.216a and 750.216b

HOUSE COMMITTEE ACTION:

The committee substitute made the following changes: 1) specified that a person who violated any of the bill's prohibition could still be charged with, convicted of, or punished for any other violation of law occurring at the same time; 2) exempted "bail agent" and "bondsman" from the definition of "law enforcement identification;" and 3) added an effective date.

ARGUMENTS:

For:

There are those in society who would use the clothing and equipment, or replicas of these items, of law enforcement agencies to victimize others. Whether done in a gesture to aid others in distress or to perpetrate a crime, such behaviors need to be prohibited. One way to decrease incidents is to make it harder to obtain the clothing and related badges and patches that identify someone as a member of a law enforcement agency. The bill would accomplish this task. It would amend a current section of law that prohibits, unless the action met one of several exemptions, the sale, furnishing, or possession of a badge or facsimile of a badge of any law enforcement agency. The bill would expand the scope of the prohibition to apply to wearing, exhibiting, displaying, or using not only a badge or a facsimile of a badge, but also a patch or uniform of any law enforcement agency.

It would also amend the exemptions to apply much more narrowly; for instance, the badge, patch, or uniform of a deceased law enforcement officer would still be exempted, but only if in the possession of the officer's spouse, child, or next of kin. Similarly, a retirement badge would remain exempt, but only in the possession of the retired law enforcement officer. The bill would create a new exemption for actors that would apply during their rehearsals and performances.

In addition, it would increase the penalty for a violation. When this section of law was first added in 1985, it was argued then that the penalty of a \$100 fine was so low as to be an ineffective deterrent. The bill would increase it to a 93-day misdemeanor and/or up to

a \$500 fine. When a maximum term of imprisonment exceeds 92 days, it triggers fingerprinting and records retention provisions that will enable law enforcement agencies to track a repeat offender – for instance, a person who roams the state using the uniforms or badges of law enforcement agencies to scam funds under the guise of collecting for charity or to assault chosen victims.

Response:

The maximum term of imprisonment for a similar prohibition in the penal code that applies to uniforms and badges utilized by the *state police* is only 90 days. It would seem advisable to also increase the penalty in that provision in order to trigger the fingerprinting and records retention provisions so necessary to track repeat offenders.

Rebuttal:

The bill as introduced in the Senate did increase the penalty for wearing, exhibiting, displaying, or using a Michigan State Police badge or uniform but the amendment was dropped in subsequent bill versions. It may be advisable to add the increased jail time back in so as to trigger the fingerprinting and records retention provisions. However, because there is a single, official trooper badge and uniform worn by officers statewide, it is also important that the current de facto ban (other than the exemption provided to actors during the course of a performance or rehearsal) remain intact for public safety purposes.

For:

The bill also creates a new section of law that would prohibit a person from wearing or displaying certain types of law enforcement identification if the person does so to represent himself or herself as a peace officer or to lead others to believe that the law enforcement agency was promoting a commercial service or a charitable endeavor. It is believed that this new section would apply to situations such as attaching an official looking shield to the outside of a vehicle so that people think they are being pulled over by a real police car or using the identification to solicit "charitable" donations. The bill's provisions would not incriminate people wearing t-shirts or hats emblazoned with the acronym of a law enforcement agency, or those carrying tote bags imprinted with a shield or emblem of a law enforcement association, as long as the person did not hold himself or herself out as a law enforcement officer. The bill also clearly exempts identification used by a bail agent or bondsman operating in accordance with the provisions of Section 167b of the penal code. Furthermore, the bill would not apply to court-appointed bailiffs or court officers, as many judges prefer their bailiffs and officers be dressed in uniforms similar to law enforcement officers in order to provide a greater sense of security in the courtroom and to readily identify them as court personnel.

POSITIONS:

The Michigan State Police support the bill. (11-9-05)

A representative of the Oakland County Sheriffs Department testified in support of the bill. (11-9-05)

A representative of the Michigan Sheriffs Association testified in support of the concept. (11-9-05)

A representative of the Michigan Professional Bail Agents Association testified that the association supports the bill in general. (11-9-05)

A representative of the Deputy Sheriffs Association of Michigan indicated support for the bill. (11-9-05)

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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.