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BILL



ANALYSIS

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Senate Bill 29 (Substitute S-2 as reported)
Senate Bill 30 (Substitute S-1 as reported)
Senate Bill 93 (Substitute S-1 as reported)
Sponsor: Senator Goeff Hansen (S.B. 29 & 93)
 Senator Rick Jones (S.B. 30)
Committee: Judiciary

Date Completed: 2-15-11

RATIONALE

Since 1976, the Michigan Penal Code has banned the possession and sale of so-called "stun guns" (also commonly known as "tasers"). The Code 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 peace officers and other specified individuals who have been trained in the use and risks of the device, while performing official duties. Some people believe that the exception to the stun gun ban should be extended to people who have a concealed pistol license (CPL) so that they could carry the devices for self-defense purposes, and that reserve police officers also should be allowed to use tasers in their law enforcement support role.

CONTENT

Senate Bill 29 (S-2) would amend the Michigan Penal Code to do all of the following:

- **Allow a reserve peace officer and a concealed pistol license holder to possess and use a device that uses electro-muscular disruption technology under certain circumstances.**
- **Require an authorized dealer who sold an EMD device to a CPL holder to verify the person's identity and handgun licensure, and provide training.**

- **Prohibit a CPL holder from using an EMD device except under circumstances that would justify his or her lawful use of force.**

Senate Bills 30 (S-1) would amend the handgun licensure law to extend to an EMD device certain provisions that apply to carrying a concealed pistol, including disclosure to a peace officer, restrictions on carrying while under the influence of alcohol or a controlled substance, and carrying in so-called "no-carry" zones.

Senate Bill 93 (S-1) would amend the sentencing guidelines in the Code of Criminal Procedure to include violations related to carrying an EMD device.

Senate Bills 29 (S-2) and 30 (S-1) are tie-barred to each other. Senate Bill 93 (S-1) is tie-barred to Senate Bills 29 and 30. All of the bills would take effect 90 days after their enactment.

Senate Bill 29 (S-2)

The Penal Code prohibits a person from selling, offering for sale, or possessing in Michigan a portable device or weapon from which an electrical current, impulse, wave, or beam, that is designed to incapacitate temporarily, injure, or kill, may be directed. A violation is a felony punishable by up to four years' imprisonment and/or a maximum fine of \$2,000. The prohibition, however, does not apply to the possession and reasonable use of an EMD device by

certain individuals, including peace officers, who have been trained in the use and risks of the device, while performing their official duties.

The bill would allow an individual who held a valid CPL under the handgun licensure law to possess and reasonably use a device that used EMD technology, if he or she had been trained in the use, effects, and risks of the device.

The bill also would include a reserve peace officer (as defined in the handgun licensure law) in the definition of "peace officer". (Under that law, "reserve peace officer" means an individual authorized on a voluntary or irregular basis by a duly authorized police agency of this State or a political subdivision of this State to act as a law enforcement officer, who is responsible for the preservation of the peace, the prevention and detection of crime, and the enforcement of the general criminal laws of this State, and who is otherwise eligible to possess a firearm under the law.)

In addition, under the bill, an authorized dealer or other person who sold an EMD technology device to a person licensed to carry a concealed pistol would have to verify the person's identity and that he or she held a valid CPL. At the time of the sale, the dealer or other person would have to give the purchaser training on its use, effects, and risks. A violation of this provision would be a misdemeanor punishable by up to 30 days' imprisonment, a maximum fine of \$500, or both.

The bill would prohibit a CPL holder from using an EMD device against another person unless the device was reasonably used under circumstances that would justify the individual's lawful use of physical force. An individual who violated this provision would be guilty of a misdemeanor punishable by up to two years' imprisonment and/or a maximum fine of \$2,000.

Senate Bill 30 (S-1)

Disclosure to Peace Officer

Under the handgun licensure law, a CPL holder who is carrying a concealed pistol and is stopped by a peace officer must immediately disclose to the officer that he or she is carrying a concealed pistol upon his or her person or in his or her vehicle. Under

the bill, if the individual were carrying an EMD device on his or her person or in his or her vehicle, he or she also would have to disclose that fact immediately to the peace officer.

Bodily Alcohol Content

Under the handgun licensure law, a licensed individual may not carry a concealed pistol while he or she is under the influence of alcohol or a controlled substance or while he or she has a bodily alcohol content prohibited by the law. The bill would extend that prohibition to carrying an EMD device.

The law contains prohibitions and penalties for a licensee who carries a concealed pistol while he or she has various levels of bodily alcohol content. These provisions, however, do not prohibit a CPL holder who has any bodily alcohol content from transporting that pistol in either of the following:

- The locked trunk of a motor vehicle in which he or she is a passenger or, if the vehicle does not have a trunk, in a locked compartment or container that is separated from the ammunition for that pistol.
- On a vessel, if the pistol is transported unloaded in a locked compartment or container that is separated from the ammunition for that pistol.

Under the bill, the law would not prohibit a CPL holder who had any bodily alcohol content from transporting an EMD device in either of the following:

- The locked trunk of a motor vehicle in which he or she was a passenger or, if the vehicle did not have a trunk, in a locked compartment or container.
- On a vessel, if the device were transported in a locked compartment or container.

Under the law, if a peace officer has probable cause to believe an individual is carrying a concealed pistol in violation of the bodily alcohol content provisions, the officer may require the individual to submit to a chemical analysis of his or her breath, blood, or urine. Under the bill, an officer also could require a chemical analysis if he or she had probable cause to believe an individual was carrying an EMD device in violation of the bodily alcohol content provisions.

No-Carry Zones

Under the handgun licensure law, an individual who is licensed to carry a concealed pistol, or who is exempt from licensure, may not carry a concealed pistol on the premises of certain types of property. Under the bill, a CPL holder who carried an EMD device on his or her person or in his or her vehicle could not carry that device in any of those no-carry zones.

The law's prohibition against carrying a concealed pistol in the no-carry zones does not apply to certain individuals. The bill also would exempt an individual licensed under the handgun licensure law who was a court officer.

(A person who violates the no-carry-zone prohibition is responsible for a State civil infraction and may be fined up to \$500 for a first offense. A second violation is a misdemeanor punishable by a \$1,000 maximum fine. A third or subsequent violation is a felony punishable by up to four years' imprisonment, a maximum fine of \$5,000, or both. These penalties also would apply to a CPL holder who carried an EMD device in a no-carry zone, subject to the exceptions for specified individuals.)

Senate Bill 93 (S-1)

The bill would include a third or subsequent offense of carrying a concealed EMD device in the sentencing guidelines designation for a third or subsequent offense of carrying a concealed pistol. A violation is a Class F public safety felony with a statutory maximum sentence of four years' imprisonment.

The bill also would add a sentencing guidelines designation for improper use of an EMD device. That violation would be a Class G public safety felony with a statutory maximum sentence of two years' imprisonment.

MCL 750.224a (S.B. 29)
28.425f et al. (S.B. 30)
777.11b & 777.16m (S.B. 93)

BACKGROUND

At the time the ban against tasers was enacted in 1976, an exception was made for 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 specify that the ban does not prohibit the possession and reasonable use of a taser 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 crew member, who has been trained in the use, effects, and risks of the device, while performing his or her official duties. Public Act 457 of 2006 amended the same provision to exclude from the ban the possession and reasonable use of a taser either by an individual employed as a private security police officer or by a local corrections officer who has custody of people detained or incarcerated in a jail or lockup facility and who is authorized in writing by the chief of police, director of public safety, or sheriff to possess and use the device.

Also, Public Act 536 of 2002 included the taser ban in a section of the Penal Code under which certain weapons restrictions do not apply to peace officers, DOC employees authorized by the Director, and certain military personnel.

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

While Michigan's handgun licensure law establishes standards and conditions for issuance of a license to carry a concealed handgun, the Michigan Penal Code generally prohibits the possession and use of a taser. It stands to reason that if individuals who meet CPL licensing standards are trusted with carrying a firearm for personal safety, the law should not ban them from carrying an EMD device for the same purpose.

Possessing a taser is legal in at least 43 other states. While allowing Michigan to join their ranks, the bills include protections against abuse of EMD devices that evidently would be greater than those in any of the other jurisdictions. Reportedly, Michigan would be the only State in which a person

would have to be licensed to carry a concealed handgun, in order to be authorized to carry a taser. Under Michigan law, holders of CPLs are trained to understand when and under what circumstances they may use deadly force. People who have obtained a CPL have demonstrated an ability to follow the law and use firearms responsibly. The bills would allow the same law-abiding citizens who are licensed to carry a pistol to possess a taser, thereby giving them a less-than-lethal option for private protection.

Supporting Argument

Data show that taser use has a low injury rate, and that fatalities are extremely rare. A study funded by the National Institute of Justice and led by an emergency medicine physician at the Wake Forest University School of Medicine found that fewer than 1% of 1,201 taser uses by officers at six law enforcement agencies across the United States resulted in serious injury. While there have been reports of some people dying after having been tasered, it is unclear whether the taser's electrical charge or another condition caused the deaths. Tasers may be a better alternative to handguns for personal safety because they are safe and effective and less lethal than firearms.

Supporting Argument

Tasers have become a fairly common tool for law enforcement officers. Because they temporarily disable a person, tasers give officers an option to diffuse a potentially dangerous situation with less-than-lethal force. While possession of tasers generally is prohibited under the Michigan Penal Code, the Code makes an exception for peace officers and various other properly trained law enforcement and corrections personnel, allowing them to possess and reasonably use the devices. Reserve peace officers, however, are not on the list of people to whom the prohibition does not apply.

Many local police agencies use reserve peace officers to supplement their law enforcement efforts. Reserve or auxiliary officers assist certified peace officers in the performance of their duties and need to have access to the same tools that are available to certified peace officers. Tasers are a useful and valuable tool for any law enforcement officer.

Opposing Argument

Reserve peace officers are not certified by the Michigan Commission on Law Enforcement Standards, as are fully certified peace officers. If reserve officers were to be authorized to carry and use tasers, there should be some standards for the officers' training and qualifications. The bill should include a requirement that reserve officers be certified through a law enforcement training academy in order to be allowed to carry and use a taser.

Response: All of the exemptions for law enforcement and corrections personnel listed in the Code require the individual to have been trained in the use, effects, and risks of the device. This also would apply to reserve officers allowed to possess and reasonably use tasers under the bill. In addition, reserve officers otherwise qualified to carry firearms are exempt under the handgun licensure Act from restrictions against carrying those weapons in no-carry zones. Allowing them also to carry and reasonably use tasers in the course of their duties would be consistent with this exemption.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed felony and misdemeanor offenses. An offender convicted of the Class F offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months, with a statutory maximum of four years. An offender convicted of the Class G offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months, with a statutory maximum of two years. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Matthew Grabowski

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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.