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BILL ANALYSIS

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Senate Bills 29 and 30 (as introduced 1-19-11)  
Senate Bill 93 (as introduced 1-27-11)  
Sponsor: Senator Goeff Hansen (S.B. 29 & 93)  
          Senator Rick Jones (S.B. 30)  
Committee: Judiciary

Date Completed: 2-1-11

### **CONTENT**

**Senate Bill 29 would amend the Michigan Penal Code to do all of the following:**

- **Allow a bail agent's fugitive recovery representative, a reserve peace officer, and a concealed pistol license (CPL) holder to possess and use a device that uses electro-muscular disruption (EMD) 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.**
- **Prohibit a CPL holder from using an EMD device except in the protection of a person or property under circumstances that would justify use of force.**

**Senate Bills 30 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 would amend the sentencing guidelines in the Code of Criminal Procedure to include violations related to carrying an EMD device.**

Senate Bills 29 and 30 are tie-barred to each other.

### **Senate Bill 29**

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 either of the following to possess and reasonably use a device that used EMD technology (commonly referred to as a "stun gun" or "taser"), if he or she had been trained in the use, effects, and risks of the device:

- An individual who had been issued a concealed pistol license under the handgun licensure law and possessed a specific written authorization from a licensed bail agent appointing him or her as the agent's fugitive recovery representative for a specific defendant being sought.
- An individual who held a valid CPL under the handgun licensure law.

A fugitive recovery representative could possess and use the device only while performing his or her official duties, and his or her written authorization from a bail agent would have to expire by December 31 of the year in which it was executed or the named defendant was apprehended, whichever occurred first.

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 in the protection of a person or property under circumstances that would justify the individual's 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. If an individual licensed to carry a concealed pistol used, or threatened to use, an EMD device during the commission of a crime to disable another person, the sentencing judge would have to consider the defendant's use or threatened use of the device as a reason for enhancing the sentence.

### **Senate Bill 30**

#### **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 properties. 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.

### **Senate Bill 93**

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)

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.