

Legislative Analysis



CARRYING FIREARMS

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House Bill 4416 (reported from committee as H-1)
Sponsor: Rep. Michele Hoytenga

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4417 (reported as H-2)
Sponsor: Rep. Pamela Hornberger

House Bill 4418 (reported as H-1)
Sponsor: Rep. Sue Allor

House Bill 4419 (reported as H-1)
Sponsor: Rep. Triston Cole

Committee: Judiciary
Complete to 6-7-17

BRIEF SUMMARY:

Taken together, the bills amend various sections of law to:

- Remove carrying of a firearm from the prohibition on carrying a dangerous weapon, whether concealed or not, on a person or in a vehicle.
- Apply the prohibition on carrying a concealed pistol only to a person who is prohibited by state or federal law from possessing a firearm.
- Repeal a provision allowing armed security guards to carry a pistol only when on duty and remove the maximum term of imprisonment for a violation from inclusion in the sentencing guidelines.
- Repeal a provision providing for exceptions to the current prohibition on carrying a concealed pistol without a license.
- Reduce the penalty for certain infractions relating to carrying a pistol without proper identification or disclosure and eliminate provisions allowing for seizure of the pistol or EMD device for a violation.
- Specify that the Natural Resources and Environmental Protection Act cannot be construed to prohibit an individual from transporting a pistol or carrying a loaded pistol, whether concealed or not.
- Tie-bar House Bills 4417-4419 to House Bill 4416, meaning that none of those bills could become law unless House Bill 4416 was also enacted.
- Take effect 90 days after enactment.

DETAILED SUMMARY:

Specifically, the bills would do the following.

House Bill 4416 amends the Michigan Penal Code (MCL 750.227 et al.) to:

- ❖ Specify that the prohibition on carrying a dangerous weapon concealed on or about the person of an individual, or concealed in any vehicle operated or occupied by the person, does not apply to a firearm or a hunting knife adapted and carried as a hunting knife. ("Firearm" is defined in the Code to mean any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive. A "pistol" is defined to mean a firearm that is 26 inches or less in length, whether loaded or unloaded. A knife adapted and carried as a hunting knife is currently excluded from being a "dangerous weapon.")
- ❖ Revise the current prohibition on carrying a concealed pistol without a concealed pistol license (CPL), and apply the prohibition on carrying a concealed pistol only to a person who is prohibited by state or federal law from possessing a firearm.

Currently, a person is prohibited from carrying a pistol concealed on or about his or her person, or, whether concealed or otherwise, in a vehicle operated or occupied by the person *without a license to carry the pistol as provided by law, and if licensed, is prohibited from carrying the pistol in a place or manner inconsistent with any restrictions upon such license*. An exception is made for conduct occurring in the person's house, place of business, or on other land possessed by the person. The bill would delete the italicized text and the exception for carrying the pistol at home, at work, or on the person's other land.

- ❖ Repeal Section 227a.
Section 227a prohibits a person licensed to carry a pistol in the scope of a profession in protecting the person or property of another (e.g., armed security guards, bodyguards) from possessing a pistol while not on duty; a pistol may be carried in his or her home or other land, or an unloaded pistol may be carried to or from his or her place of employment. A violation is a felony punishable by up to four years imprisonment and/or up to a \$5,000 fine.
- ❖ Repeal Section 231a.
Section 231a specifies that the current prohibition against carrying a concealed pistol contained in Section 227 does not apply to any of the following:
 - A resident from another state who is licensed by that state to carry a concealed pistol.
 - Transportation of pistols by an authorized agent of a person licensed to manufacture firearms.
 - A person carrying an antique firearm when unloaded in a closed case or container designed for the storage of firearms and carried in the trunk of a vehicle.
 - A person while transporting a pistol for a lawful purpose that is licensed by the owner or occupant of the motor vehicle in compliance with Section 2 of the Handgun Licensing Act and the pistol is unloaded in a closed case designed for the storage of firearms in a vehicle that does not have a trunk and is not readily accessible to the vehicle's occupants.

Section 231a also contains a definition for "antique firearm." (The identical definition is contained in Section 237a of the Code, which proscribes certain conduct in weapon-free school zones.)

- ❖ Eliminate references to the repealed sections in several provisions of the Code.

House Bill 4417 amends the Handgun Licensing Act, Public Act 372 of 1927 (MCL 28.432 and 28.435). The bill makes several revisions of a technical nature; for instance, the bill replaces references to the definition for antique firearm contained in Section 231a of the Michigan Penal Code, which would be repealed by House Bill 4416, with a reference to Section 237a of the Code.

Further, a person licensed to carry a concealed pistol must have that license and a driver license or personal identification card in his or her possession at all times when carrying a concealed pistol or portable EMD device (a device that uses electro-muscular disruption technology, also known as a personal Taser) and show the licenses and/or ID to a peace officer upon request. Also, if stopped by a peace officer, a person must disclose immediately that he or she is carrying a pistol or EMD device upon his or her person or in his or her vehicle. A violation subjects a person to a range of state civil infractions, suspension of the CPL for a subsequent violation, and seizure of the pistol or EMD until proof of the CPL is presented.

The bill revises the above provisions as follows:

- ❖ Requires a person carrying a concealed *firearm* (rather than a pistol) or a portable EMD device and who is stopped by a peace officer to upon request by the peace officer (rather than immediately) disclose that fact.
- ❖ Eliminates the higher civil penalties currently imposed for failure to disclose, suspension of the CPL for repeat violations, and seizure of the pistol or EMD device. Instead, failure to carry the CPL, the driver license or state ID, or to disclose would be a state civil infraction and the person will be fined \$100. (A pistol or EMD device carried in violation of other provisions of the Handgun Licensing Act will still be subject to seizure and forfeiture.)

House Bill 4418 amends the Natural Resources and Environmental Protection Act (MCL 324.43510). Under the bill, Section 43510 would specify that the NREPA or a rule promulgated under it or a rule issued by the Department of Natural Resources or the Michigan Natural Resources Commission cannot be construed to prohibit an individual from transporting a pistol or carrying a loaded pistol, whether concealed or not.

Currently, the provision applies only if:

- ❖ The individual has in his or her possession a license to carry a concealed pistol under provisions of the Handgun Licensing Act: or,
- ❖ The individual is authorized under the circumstances to carry a concealed pistol without obtaining a license to carry a concealed pistol under the Handgun Licensing Act, as provided for under:

- Section 12a of the Act.
- Sections 227, 227a, 231, and 231a of the Michigan Penal Code.

House Bill 4419 amends the Code of Criminal Procedure (MCL 762.12 and 777.16m). The bill deletes references to Section 227a of the Michigan Penal Code, which would be repealed by House Bill 4416. The bill also deletes the maximum term of imprisonment for a violation of Section 227a from inclusion in the sentencing guidelines.

FISCAL IMPACT:

State Police:

House Bill 4416 would have an indeterminate fiscal impact on the Department of State Police. Pursuant to 1927 PA 372 section 5b(5), county clerks collect a fee to process concealed pistol license applications. A portion of this fee is transferred to the Department of Treasury to be credited to the Department of State Police in order to cover the costs of completing background checks on individuals seeking a concealed pistol license, maintaining the concealed pistol license database, compiling and issuing the annual concealed pistol license report to the Legislature, and other activities related to concealed pistol licensure. Therefore this bill would reduce the revenues generated by the concealed pistol license application fees, but would also reduce the workload that these fees support. Any costs savings realized, or net revenue reductions, would depend upon the extent to which these costs would exceed, or would be less than, revenues from fees collected pursuant to 1927 PA 372 section 5b(5).

The Department of State Police reported that in FY 2015-16 total statewide revenues from concealed pistol license application fees were \$8,020,900. Total FY 2015-16 statewide expenditures matched revenues. (For more information, see the Department of State Police FY 2015-16 concealed pistol licensing report.¹)

Corrections & Judiciary:

HB 4416 would have an indeterminate fiscal impact on the state and on local units of government, depending on how many persons are currently convicted under provisions being repealed by the bills. Felony convictions result in increased costs related to state prisons and state probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. New misdemeanor convictions increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Penal fine revenues increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units, depending on how the repealers affected court caseloads and related administrative costs.

¹ http://www.michigan.gov/documents/msp/Oct._2015-Sept._2016_CPL_Annual_Report_560961_7.pdf

BRIEF DISCUSSION OF THE ISSUES:

Under the bill package:

A person would not have to obtain a concealed pistol license (CPL) to carry a concealed pistol within the state on his or her person or in his or her vehicle, as long as the person is not prohibited under state or federal law from possessing a firearm. However, current provisions pertaining to pistol-free zones are not amended by the bill package and so remain intact.

A person could still obtain a CPL, and a CPL will still be required to possess a device using electro-muscular disruption technology (known as a personal Taser or EMD device). Stun guns, which use a different technology, will still be prohibited.

A person will still need to obtain a pistol license in order to purchase, carry, possess, or transport a pistol in this state. The bill package does not change any current laws regarding the permit, registration, or background check requirements for a handgun.

A person carrying a concealed firearm or personal EMD device would still have to disclose that fact if stopped by a peace officer, but only upon request of that officer (though many in support of the package recommend voluntary disclosure).

It will still be against the law to carry any firearm, concealed or openly, with the intent to use that weapon unlawfully against another person.

Transport of a firearm, other than a pistol, in a vehicle will still require the firearm to be unloaded, taken down, enclosed in a case, carried in the trunk, and be inaccessible from the interior of the vehicle.

A personal protection order can specify that the subject of the order may not possess a firearm. Thus, a person who is the subject of a PPO for domestic violence or stalking could not lawfully carry a concealed pistol, period.

Statements Made in Support of the Bills

- It is currently legal in Michigan for a law-abiding person to carry a gun of any kind openly (with the exception of certain gun-free zones), but if a person's clothing, such as a coat, covers even a millimeter of the gun, the person can be charged with carrying a concealed weapon. Further, though a loaded pistol may be carried openly, each time a person gets into a vehicle, the pistol must be broken down, put in a case, and locked in the vehicle's trunk, with the process reversed upon exiting the vehicle. The bill package simply makes it legal for a person to carry a pistol, loaded or unloaded, concealed or openly, on his or her person or in a vehicle. The amendments will prevent otherwise law-abiding citizens from becoming convicted criminals just because their clothing inadvertently covered a portion of the pistol or because they forgot to remove a pistol from a holster when entering a vehicle and

securing it in the trunk. A person who is prohibited under state or federal law from purchasing or possessing a firearm would not be allowed to carry a concealed pistol under the bill package.

- The most dangerous time of carrying a pistol is when loading and unloading it to place it in a case. Allowing non-CPL holders to keep their pistols on safety and secured in a holster when entering and exiting vehicles will minimize the risk of accidental discharges. It will also minimize misunderstandings when passersby in a parking lot or on the street see someone standing near his or her trunk reloading a pistol for legal open carry.
- Currently, if a person has a CPL but the other occupants of a vehicle do not, those occupants can be charged with illegal transport of a firearm. The bill package resolves such issues.
- House Bill 4418 would allow a person to carry a concealed pistol without a CPL in a field where wildlife is present. This allows someone who carries a concealed pistol for self-defense to carry it even when walking through the woods or across a field where wildlife, such as deer or raccoons, may be present.
- Though the bill package does not require a person take a pistol safety course or any gun training before carrying a concealed weapon, data from some states that have already enacted constitutional carry show an increase in the number of people seeking pistol safety instruction. In Michigan, anyone wanting a CPL so that they can carry a concealed handgun in other states and also in certain pistol free zones within Michigan, or carry a personal Taser, would still need to undergo the required education and training. Further, many states do not require training for a concealed carry permit or license, and 13 states have no requirement to obtain a license to carry a handgun as long as the person is legally able to possess a firearm.
- The Second Amendment of the Constitution allows law-abiding citizens the right to bear arms. Current gun laws restrict the free exercise of this right.
- Many low-income persons who live in high crime areas or otherwise wish to carry a concealed pistol for self-defense may not have the money for a CPL or the required training course, or even access to transportation to get to a training course. Thus, the bills create an even playing field for all to protect themselves.
- At least a dozen states have enacted constitutional carry laws, as the proposal is known, without turning into the "Wild West" of the past as some feared, with legislation proposed in more states.
- House Bill 4417 will still require a person carrying a concealed firearm or a Taser on his or her person or in a vehicle to disclose that fact to a peace officer, although the officer would now be required to ask if the person had a concealed firearm.

Statements in Opposition

- The concept that the presence of more guns on the street will result in a safer community and decreases in crime is flawed. There is no credible evidence that increasing the presence of guns increases safety; however, the presence of a gun in the home does increase the risk of death by homicide for those in the home from 40-170 percent.
- Despite statements that gun owners are safe owners (and therefore don't need safety training), some gun owners are negligent as evidenced by the over 150 children under 12 who either killed themselves or were mistakenly shot and killed by another child between 2014-2016 from unsecured guns. Making it easier to carry guns in public could have the unintended consequence of increasing the likelihood children will come upon loaded pistols and other firearms with disastrous results.
- Not all states are rushing to enact constitutional carry laws. In fact, in May of 2017, a House panel in Louisiana struck down a third attempt to allow concealed carry without a permit. Georgia, Kentucky, New Mexico, and South Dakota also recently defeated permitless carry bills, and law enforcement officers in several other states are publicly opposing enactment of such laws.
- Law enforcement need a reliable method of determining, and determining quickly, whether a person carrying a firearm, concealed or openly, is doing so with a lawful purpose or if that person poses a threat to the public safety. Enactment of the bill package will result in a policy that shifts the burden of producing proof that the person may lawfully carry a concealed weapon from the person carrying the weapon totally onto law enforcement. The implementation of such a policy can be likened to that of medical professionals who because they don't know if a patient has an infectious disease must therefore assume that everyone does and take precautions to protect themselves and others from blood-borne pathogens. Thus, will enactment of the bills lead to law enforcement officers assuming that all carrying guns in public are up to no good or are a danger? Under the bill, a CPL holder will still need to carry that license, as well as their driver license or ID, at all times they carry. However, without someone needing to quickly produce a CPL to show that they have already been vetted and can legally carry that concealed pistol, how is an officer to distinguish without going through a lengthier process that the person has no prohibitions against such carry? Further, though a person is required under Michigan law to present identification at a traffic stop, a person stopped in other situations by a law enforcement officer has no legal responsibility to identify himself or herself. Therefore, the officer could not quickly check LEIN to see if the person is prohibited from open or concealed carry.
- Pistols, as are all firearms, are some of the most dangerous weapons. Yet, where a dagger may not be concealed on a person or in a vehicle, a weapon that can take a life from a distance could not only be carried concealed, the person carrying it would not have to go through any safety training or education courses. There have

been incidents in Michigan already where CPL holders, who do have to undergo training, have injured and even killed bystanders because of not following training. Further, many people are not familiar with when the use of deadly force is lawful and when it isn't, such as shooting while chasing a fleeing attacker who is running away. While training and education do not prevent such unfortunate tragedies, it does appear to minimize them, as evidenced by the low incident rate among CPL holders.

- Another reason the bills should require training is that some statistics reveal that 95 percent of owners of firearms are not interested in receiving training beyond what is required. Yet, those who do complete safety training say how valuable that training is; not just in how to safely handle the firearm, but in the laws so that they don't inadvertently break the law.
- The CPL process identifies many who are not qualified to carry a concealed pistol or Taser, resulting in tens of thousands or denials and thousands more revoked or suspended. Though those denied represent a fraction of the numbers who apply and are approved each year, the process still weeds out some who should not be lawfully carrying a concealed weapon.
- Opponents of the legislation say that statistics still show that states with the highest gun ownership had the most deaths from firearms and the states with the lowest numbers of gun ownership have the lowest number of gun deaths. Further, making it easier to take guns into public places could result in a higher risk of guns being lost, stolen, or misplaced and thus falling into the wrong hands or the hands of children.

POSITIONS:

Representatives from the following entities testified in or indicated **support** for the bills on 5-16-17, 5-23-17, and/or 5-30-17:

Michigan Open Carry
Michigan Gun Owners
Michigan Association for Gun Rights
Freedom Firearms
Michigan Coalition for Responsible Gun Owners
National Rifle Association
Michigan Campaign for Liberty
Calhoun County Gun Owners Association
Sheriff Leaf of Barry County

Representatives from the following entities testified against or indicated **opposition** to the bills on 5-16-17, 5-23-17, and/or 5-30-17:

Michigan State Police

Michigan Association of Chiefs of Police
Michigan Sheriffs' Association
Fraternal Order of Police

Muskegon County Prosecuting Attorney
Wayne County Prosecutor's Office
Peace Education Center
Moms Demand Action
Physicians for the Prevention of Gun Violence
Ultimate Protection Academy
Brady Campaign
Michigan Coalition to Prevent Gun Violence
Million Mom March
Michigan Coalition to Prevent Gun Violence
Michigan Coalition to End Domestic and Sexual Violence
Coalition for Common Ground
Voices of Peace

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Kent Dell

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.