

Legislative Analysis



POSSESSION OF TOOLS WITH INTENT TO STEAL A MOTOR VEHICLE OR, IN CONCERT, MORE THAN ONE

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House Bill 5182 (H-2) as reported from committee
Sponsor: Rep. Denise Mentzer

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

House Bill 5183 (H-1) as reported from committee
Sponsor: Rep. Alabas A. Farhat

Committee: Criminal Justice
Revised 5-1-24

SUMMARY:

House Bill 5182 would amend the Michigan Penal Code related to prohibitions against the knowing possession of certain tools with the intent to use them to break and enter into, for instance, a building, room, safe, or vehicle. The bill would take effect 90 days after it is enacted.

The code now generally prohibits a person from knowingly possessing a substance, tool, or device that is adapted and designed for breaking into a building, room, vault, safe, or other depository to steal money or other property (i.e., “burglary tools”) if both of the following apply:

- The person knows that the substance, tool, or device is adapted and designed for breaking and entering.
- The person intends to use the substance, tool, or device to break and enter.

A violation is a felony punishable for up to 10 years.

Possession of tools with intent to steal motor vehicle

The bill would add provisions to prohibit a person from knowingly possessing either of the following with the intent to steal a motor vehicle:

- A substance, tool, or device adapted and designed for breaking into a motor vehicle.
- An electronic device or tool designed or adapted to unlock or turn on a motor vehicle (except for a previously issued activated electronic card, key, or other electronic device assigned to the lawful owner of the vehicle).

A violation would be a felony punishable by imprisonment for up to five years.

Possession of tools as part of criminal organization with intent to steal motor vehicles

The bill also would prohibit a person from knowingly possessing either of the following with the intent to steal more than one motor vehicle if the person does so in association with another individual or group of individuals as part of a criminal organization:

- A substance, tool, or device adapted and designed for breaking into a motor vehicle.
- An electronic device or tool designed or adapted to unlock or turn on a motor vehicle (except for a previously issued activated electronic card, key, or other electronic device assigned to the lawful owner of the vehicle).

A violation would be a felony punishable by imprisonment for up to 10 years.

Amendment of existing general prohibition

As described above, the code now generally prohibits a person from knowingly possessing a substance, tool, or device that is adapted and designed for breaking into a building, room, vault, safe, or other depository to steal money or other property if the person knows that the substance, tool, or device is adapted and designed for breaking and entering and the person intends to use the substance, tool, or device to break and enter. Under current law, there are three elements of a violation: 1) A tool adapted and designed for breaking and entering 2) is knowingly possessed by a person 3) with the intent to use it for breaking and entering.¹

The bill would instead generally prohibit a person from knowingly possessing a substance, tool, or device that is adapted and designed for breaking into a building, room, safe, or other depository with the intent to use it to steal money or other property if the person knows that the substance, tool, or device is adapted and designed for breaking and entering and the person intends to use the substance, tool, or device to steal. Under the bill, there would be four elements of a violation: 1) A tool adapted and designed for breaking and entering 2) with the intent to use it to steal 3) is knowingly possessed by a person 4) with the intent to use it to steal.

The potential practical effect of these changes is unclear (see “Brief Discussion,” below). A violation would still be a felony punishable by imprisonment for up to 10 years.

Depository

The current general prohibition against knowingly possessing burglary tools with the intent to break and enter applies to an intent to break into a motor vehicle—for example, to steal money or other property from its trunk or passenger compartment—because the courts have held that motor vehicles are included in the phrase *or other depository* in the list of places that might be broken into. The bill would specifically provide instead that **depository** does *not* include a motor vehicle. Under the bill, this section of law would no longer apply to knowing possession with the intent to break into a motor vehicle, except in cases where the intent is specifically to do so in order to steal the entire vehicle.

Other provisions

The bill also would specifically provide that the above provisions do not prohibit an individual from being charged with, convicted of, or punished for any other violation of law committed while violating the above provisions.

MCL 750.116

House Bill 5183 would amend the sentencing guidelines in the Code of Criminal Procedure to provide that possession of a substance, tool, or device with intent to steal a motor vehicle, as described above, is a Class E crime against property with a maximum term of imprisonment of five years. Possession of a substance, tool, or device as part of a criminal organization and with intent to steal more than one motor vehicle, as described above, would be a Class E crime against property with a maximum term of imprisonment of 10 years. The description of the current-law 10-year felony would be revised to exclude motor vehicles. The bill would take effect 90 days after it is enacted, but would not take effect unless HB 5182 were also enacted.

MCL 777.16f

¹ *People v Dorrington*, 221 Mich 571, 574 (1923). Also see the [MSC Model Jury Instructions for the offense](#).

BACKGROUND:

In the summary above, “a substance, tool, or device” is a paraphrase of “any nitroglycerine, or other explosive, thermite, engine, machine, tool or implement, device, chemical, or substance,” and “breaking into” is a paraphrase of “cutting or burning through, forcing, or breaking open.”

Previous legislation

House Bill 5182 is similar to Senate Bill 870 of the 2020-21 legislative session, which was passed by the Senate and reported from the House Judiciary committee.

Other state law

Section 414a of the Michigan Vehicle Code currently prohibits possession of a motor vehicle master key (a physical key designed to open locks on more than one motor vehicle), except by locksmiths, law enforcement officers, and those engaged in the business of repairing or storing motor vehicles. A violation is a misdemeanor.

BRIEF DISCUSSION:

Electronic devices to steal cars

Keyless entry is standard on most new vehicles, and push-button starts are increasingly making physical car keys a thing of the past. This new technology, though, is vulnerable to devices known as “pro pads,” which can be used to reprogram a key fob so that it will start a car’s engine.² Although legitimately used by locksmiths and mechanics, police report that these devices are increasingly being used to steal vehicles. With a pro pad, a key fob can be reprogrammed and the vehicle stolen in under a minute. According to committee testimony, 21,238 cars were stolen in Michigan in 2021, and 25,735 in 2022. One estimate was that 85% to 90% of stolen vehicles manufactured in 2018 or later were stolen using a pro pad.

It is currently against the law to knowingly possess tools used to break and enter with the intent to use them for that purpose, including an intent to break into a vehicle to steal something from inside. Michigan also criminalizes car theft itself. However, there is no law that specifically criminalizes possessing certain tools or devices with the intent to steal a vehicle. According to committee testimony, this means that a person in possession of a device clearly intended to be used to steal a car (i.e., a pro pad) cannot be arrested unless they are caught in the act of doing exactly that. Some feel that possessing tools with the intent to steal a vehicle should be a prohibited in the same way as possessing burglary tools with intent. As car thefts continue to regularly (and increasingly) happen across the state, often perpetrated by organized criminal rings operating in several states, the hope is that the bills may better enable police to intercept would-be thieves *before* a vehicle is stolen. The bills would still allow the possession and use of pro pads by those who possess and use them for legitimate reasons.

Amendment of existing general prohibition

As noted above, the potential practical effect of the bill’s changes to the current prohibition against knowingly possessing burglar tools with the intent to use them to break and enter is unclear. A violation is a specific intent crime, which means that part of the burden of proof in prosecuting an offense is showing that the defendant had a particular purpose or state of mind. This is generally shown by circumstantial evidence such as the defendant’s acts or knowledge.

² <https://www.autopropad.com/>

Under current law, proving the first two elements of the crime (the act of possessing tools adapted or designed for breaking and entering by a person, and the knowledge that they were adapted or designed to break and enter) might constitute a certain level of circumstantial evidence toward the third element, which is that the person intended to use the tools to break and enter. Other evidence (maybe the person was found with the tools near a locked door that shows signs of being worked on by the tools) can further get at the defendant's intent.

The bill would amend the current prohibition to make two changes to its intent requirements. The first would add a *second* intent requirement for these provisions: the act of designing or adapting the tools for breaking and entering would have to have been done with the intent to use the tools to steal. The potential practical effect of this change is unclear, but it would appear to require both knowing who designed or adapted the tools and having evidence regarding what they intended to use the tools for while designing or adapting them.³

The second change would require that the person who knowingly possesses tools designed for breaking and entering must do so with the intent to use them *to steal* (rather than to break and enter). The potential effect of this change is also unclear, but it would appear to narrow the scope of the provision.

The law currently prohibits possession of these tools with an intent to break and enter regardless of the ultimate reason for breaking and entering, which is to say that it also applies when the intent is to break and enter *for any reason other than stealing* (for example, if someone's ex is found in the backyard with a crowbar).

Under the bill, the provision would appear to no longer apply unless the intent is specifically to steal something. In addition, because that intent (*stealing*) would no longer be connected to a quality of the tools or the person's knowledge of that quality (that they were designed or adapted *to break and enter*), it could be harder to prove an intent to use the tools to steal under the bill than it is now to prove an intent to use them to break and enter (the thing the person knows the tools are for).

FISCAL IMPACT:

House Bill 5182 would have an indeterminate fiscal impact on the state and on local units of government. To the extent provisions of the bill result in an increase in felony convictions, the bill would result in increased costs related to state prisons and state probation supervision. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$48,700 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,400 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affect court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase

³ The law currently says that the tools must have been designed or adapted for breaking and entering "in order to steal" something from inside the place broken into. This "in order to steal" does not appear to be an intent requirement *per se*, and seems to have been generally taken as a nineteenth century way of saying "we are describing burglar's tools."

in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5183 is a companion bill to House Bill 5182 and would amend the sentencing guidelines chapter of the Code of Criminal Procedure to include the following as Class E felonies: possession of burglar's tools with intent to steal money or property from a structure or depository other than a motor vehicle, possession of burglar's tools with intent to steal a motor vehicle, and possession of burglar's tools as part of a criminal organization and with intent to steal more than one motor vehicle. The felonies would be punishable by a maximum of 10 years, 5 years, and 10 years, respectively. The bill would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Representatives of the following entities testified in support of the bills (2-6-24):

- Troy Police Department
- Dearborn Police Department
- Macomb County

The following entities indicated support for the bills:

- Toyota (2-6-24)
- Michigan Fraternal Order of Police (2-6-24)
- Michigan Sheriffs' Association (3-12-24)
- Michigan Auto Dealers Association (2-6-24)
- Michigan Manufacturers Association (2-6-24)
- Prosecuting Attorneys Association of Michigan (2-6-24)
- City of Detroit (3-12-24)
- Detroit Police Department (3-12-24)

A representative of the ACLU of Michigan testified in opposition to the bills. (2-6-24)

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■ 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.