



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 519 (as reported without amendment)
Sponsor: Senator Jud Gilbert, II
Committee: Judiciary

(as passed by the Senate)

Date Completed: 5-27-08

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 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 this exception to the stun gun ban should be extended to reserve police officers, so that they also could use tasers in their law enforcement support role.

CONTENT

The bill would amend the Michigan Penal Code to allow the possession and reasonable use of a device that uses electro-muscular disruption technology by a reserve peace officer who had been trained in the use, effects, and risks of the device, and was using it while performing his or her official duties.

The 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 may be directed to incapacitate temporarily, injure, or kill. 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 a device that uses electro-muscular disruption technology by certain individuals, including peace officers, if they have been trained in the use, effects, and risks of the device, and are using it while performing their official duties. The bill would include a reserve peace officer (as defined in the handgun licensure Act) in the definition of "peace officer".

Under the handgun licensure Act, "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 Act.

MCL 750.224a

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

Stun guns, or 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 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 included in 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. Algonac, for example, has a 24-hour police operation with only a seven-person staff, which is supplemented by five reserve officers, according to testimony of the Algonac chief of police before the Senate Judiciary Committee. Although Algonac is a small town, its

location on an international border presents problems with drug-running and other types of smuggling on a regular basis, so the extra help in the form of reserve peace officers is essential. 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, the exception to the prohibition should include some standards on the officers' training and qualifications. At the Senate Judiciary Committee meeting, the Algonac police chief indicated that all of his reserve officers receive 220 hours of training at an academy at either Oakland Community College or Macomb Community College, but he could not speak to the credentials of other agencies' reserve officers. The bill should include a requirement that reserve officers be certified through an 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 a firearm are exempt under the handgun licensure Act from restrictions against carrying those weapons in certain locations. 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 bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many reserve peace officers, absent this legislation, will be convicted of possessing and using a device that uses electro-muscular disruption technology. If reserve peace officers were exempt from the

prohibition, local governments would avoid the costs of incarceration in local facilities, which vary by county. The State would avoid the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000. Reduced penal fine revenue would affect public libraries.

Fiscal Analyst: Lindsay Hollander

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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.