

Legislative Analysis



POSSESSION OF ELECTRONIC DEVICE OR TOOL WITH INTENT TO STEAL MOTOR VEHICLE

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Senate Bill 870 (H-3) as reported from House committee
Sponsor: Sen. Jim Runestad
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 12-6-22

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

BRIEF SUMMARY: Senate Bill 870 would amend the Michigan Penal Code to create a criminal penalty for knowingly possessing certain tools and electronic devices designed to break into and steal a motor vehicle with the intent to steal the vehicle.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local governments. (See *Fiscal Information*, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Keyless entry, in which a fob is used to lock or unlock the doors and trunk of a vehicle, is standard on most new vehicles, and push button starts on many new models are increasingly making car keys a thing of the past. The technology, however, is vulnerable to devices known as “pro pads,” which can be used to reprogram a key fob in minutes to gain entry to a vehicle and start the engine. Although used legitimately by locksmiths and mechanics when a fob stops working or is lost or locked in the vehicle, police report that these devices are also being used to steal vehicles quickly without the damage that can result from using a crowbar or other tool. According to law enforcement, there have been close to 900 vehicles stolen statewide using pro pad devices since the start of 2022.

Currently, it is against the law to possess certain tools used to break into buildings and other structures for the purpose of stealing money or property from those buildings or structures. Although Michigan criminalizes thefts of property from vehicles, stealing tires and catalytic converters, and car theft, there is no equivalent law criminalizing the possession of certain tools or electronics to break into a vehicle for the purpose of stealing the vehicle. Unless the person is caught in the act, an officer cannot arrest a person in possession of burglary tools clearly intended to be used to steal a vehicle. Some in law enforcement feel that, since possession of burglary tools to break into a home or a safe is a crime, a tool whose purpose is to be used to break into and steal a vehicle should also be a crime.

THE CONTENT OF THE BILL:

Senate Bill 870 would amend section 116 of the Michigan Penal Code to provide that an individual who knowingly possesses any nitroglycerine, or other explosive, thermite, engine, machine, tool or implement, device, chemical, or substance, adapted and designed for cutting or burning through, forcing, or breaking open a motor vehicle, or an *electronic device or tool* that is designed or adapted to unlock or turn on a motor vehicle, with the intent to steal a motor vehicle is guilty of a felony punishable by imprisonment for up to five years.

Electronic device or tool would mean a device or tool with the purpose of unlocking or turning on a motor vehicle. The term would not include a previously issued activated electronic card, key, or other electronic device assigned to the vehicle's lawful owner.

Currently, section 116 prohibits knowingly possessing any nitroglycerine, or other explosive, thermite, engine, machine, tool or implement, chemical or substance, adapted and designed for cutting or burning through, forcing or breaking open any building, room, vault, safe, or other depository, in order to steal any money or other property, knowing that the item possessed has been adapted and designed for that purpose. A violation is a felony punishable by imprisonment for up to 10 years.

The bill would take effect 90 days after its enactment.

MCL 750.116

HOUSE COMMITTEE ACTION:

The House Judiciary committee reported an H-3 substitute that placed the proposed prohibition against possessing certain tools and electronic devices with the intent to use them to steal a vehicle in a separate subsection from the current prohibition against possessing certain tools intended to be used to break into and steal property or money from a home, safe, or other depository. The substitute also decreased the maximum term of imprisonment for a violation of possessing the listed tools and devices in order to steal a vehicle from 10 years to five years.

FISCAL INFORMATION:

Senate Bill 870 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 2021, the average cost of prison incarceration in a state facility was roughly \$44,400 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,600 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 in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

ARGUMENTS:

For:

Michigan law criminalizes the possession of burglary tools designed to break into homes, buildings, vaults, and safes with the intent to steal money or property. A similar law does not exist for the possession of tools, including newer technology such as a pro pad, designed to break into and steal a vehicle. Pro pads, which are used to circumvent keyless systems in late-model vehicles, are easily attainable on the internet. The House substitute would create a five-year felony for possessing such tools with the intent to steal a vehicle. As car thefts continue

to happen regularly across the state, the bill may enable the police to thwart car theft rings and intercept would-be thieves before a vehicle is stolen. Further, the bill would protect possession of the tools or electronic devices by first responders, tow truck drivers, locksmiths, and mechanics who do not possess such tools or pro pads to break into a vehicle for the purpose of stealing the vehicle, but who use the tools and devices in emergencies and when keys and key fobs malfunction or are lost or locked inside the vehicle.

Against:

The committee-reported version of SB 870 includes the following apparent discrepancies that could pose difficulties for law enforcement officers and prosecutors when enforcing the prohibition proposed by the bill:

- Under the bill, possession of an electronic device such as a pro pad in order to steal a vehicle would be against the law, but the bill would not appear to apply to possessing the same electronic device in order to gain entry to a vehicle for the purpose of stealing money or property from it.
- Under the bill, possession of the various items and substances known as “burglary tools” would be a five-year felony if intended to be used to steal a vehicle, but possession of those same burglary tools would remain a 10-year felony if intended to be used to break into a vehicle to steal money or property from it. (Courts have ruled that a vehicle is a “depository” for purposes of section 116’s current prohibition against possessing burglary tools with the intent to break into a building, room, vault, safe, or other depository to steal money or property.)

POSITIONS:

A representative of the Troy Police Department testified in support of the bill. (9-20-22)

Representatives of the following entities indicated support for the bill:

- Michigan Department of State Police (9-28-22)
- Michigan Association of Chiefs of Police (9-28-22)
- Oakland County Sheriff Mike Bouchard (9-20-22)
- Michigan Sheriffs’ Association (9-28-22)

The Criminal Defense Attorneys of Michigan indicated a neutral position on the bill. (9-28-22)

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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.