

PROHIBIT FIREARM POSSESSION FOR DOMESTIC VIOLENCE MISDEMEANORS AND EXPAND DEFINITION OF FELONY

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 4945 and 4946 as introduced

Sponsor: Rep. Amos O'Neal

Committee: Criminal Justice

Complete to 9-25-23

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

SUMMARY:

House Bill 4946 would amend the Michigan Penal Code to prohibit a person convicted of specified misdemeanors involving domestic violence from possessing, using, or transferring a firearm or ammunition for eight years after they have paid any fines, served any imprisonment, and completed any conditions of parole or probation for the violation. The bill also would change the definition of the term *felony* to expand the list of crimes for which a person may be prohibited from possessing, using, or transferring a firearm or ammunition for three years after completing their sentence (or, in specified cases, for at least five years).

Current law

The act now prohibits a person convicted of a *felony* from possessing, transporting, selling, purchasing, shipping, receiving, or distributing a firearm or ammunition in Michigan until three years have passed since the person paid any fines, served any imprisonment, and completed any conditions of parole or probation for the violation.

Felony means a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for four years or more, or an attempt to violate such a law.

In addition, the act prohibits a person convicted of a *specified penalty* from possessing, transporting, selling, purchasing, shipping, receiving, or distributing a firearm or ammunition in Michigan until both of the following are met:

- Five years have passed since the person paid any fines, served any imprisonment, and completed any conditions of parole or probation for the violation.
- The person's right to possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm has been restored under section 4 of 1927 PA 372.¹

Specified felony means a *felony* to which one or more of the following apply:

- An element of the felony is the use, attempted use, or threatened use of physical force against the person or property of another, or by its nature, the felony involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
- An element of the felony is the unlawful manufacture, possession, importation, exportation, distribution, or dispensing of a controlled substance.
- An element of the felony is the unlawful possession or distribution of a firearm.
- An element of the felony is the unlawful use of an explosive.

¹ See <http://legislature.mi.gov/doc.aspx?mcl-28-424>

- The felony is burglary of an occupied dwelling, breaking and entering an occupied dwelling, or arson.

A person who possesses, uses, transports, sells, purchases, carries, ships, receives, or distributes a firearm or ammunition in violation of the above prohibitions is guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$5,000, or both.

Domestic violence misdemeanors

The bill would additionally prohibit a person convicted of a ***misdemeanor involving domestic violence*** from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm or ammunition in Michigan until eight years after all of the following applicable conditions have been met:

- The person has paid all fines imposed for the violation.
- The person has served all terms of imprisonment imposed for the violation.
- The person has successfully completed all conditions of probation or parole imposed for the violation.

Misdemeanor involving domestic violence would mean a misdemeanor that meets all of the following:

- It is punishable by imprisonment for one year or less.
- It is one of the following offenses:
 - A violation of any of the following Michigan Penal Code sections (also see Table 1, below):
 - Section 81 (assault or assault and battery).
 - Section 81a (aggravated assault).
 - Section 115 (breaking and entering or entering without breaking).
 - Section 145n (vulnerable adult abuse).
 - Section 377a (willful and malicious destruction of personal property).
 - Section 380 (willful and malicious destruction of another's house, barn, or building).
 - Section 411h (stalking).
 - Section 520e (fourth degree criminal sexual conduct).
 - Section 540e (malicious use of phone service).
 - A violation of an ordinance, a law of another state, or a law of the United States that substantially corresponds to a violation listed above.
 - A violation of an ordinance, a law of another state, or a law of the United States that is specifically designated as domestic violence.
- Any of the following apply:
 - The victim is the convicted person's spouse or former spouse.
 - The victim has or has had a ***dating relationship*** with the convicted person.
 - The victim has or has had a child in common with the convicted person.
 - The victim is a resident or former resident of the convicted person's household.
 - The convicted person is the victim's parent or guardian.

Dating relationship would mean frequent, intimate associations primarily characterized by the expectation of affectional involvement. The term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

Table 1 shows the offenses listed above in the definition of *misdemeanor involving domestic violence* that (with one exception) are punishable by up to one year of imprisonment.

Table 1

MCL	Description	Maximum imprisonment
750.81(1)	Assault or assault and battery	93 days
750.81(2)	Assault or assault and battery of the person's spouse or former spouse, an individual with whom they have or have had a dating relationship, an individual with whom they have had a child in common, or a resident or former resident of their household	93 days
750.81(3)	Assault or assault and battery of an individual who is pregnant if the person knows the individual is pregnant	93 days
750.81(4)	Assault or assault and battery in violation of MCL 750.81(2) or 750.81(3) (described above), with a prior conviction under either MCL 750.81(2) or 750.81(3)	1 year
750.81a(1)	Assault without a weapon inflicting serious or aggravated injury upon the individual without intending to commit murder or to inflict great bodily harm less than murder	1 year
750.81a(2)	Assault in violation of MCL 81a(1) (described above) of the person's spouse or former spouse, an individual with whom they have or have had a dating relationship, an individual with whom they have had a child in common, or a resident or former resident of the same household	1 year

MCL	Description	Maximum imprisonment
750.115	Breaking and entering, or entering without breaking, into any dwelling, house, tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, boat, ship, railroad car or structure used or kept for public or private use, or any private apartment in such a place, or any cottage, clubhouse, boat house, hunting or fishing lodge, garage or the out-buildings belonging to such a place, any ice shanty with a value of \$100 or more, or any other structure, whether occupied or unoccupied, without first obtaining permission to enter from the owner or occupant, agent, or person having immediate control of the property	90 days
750.145n(4)	Vulnerable adult abuse in the fourth degree (in which the reckless act or reckless failure to act of the caregiver or other person with authority over a vulnerable adult causes physical harm to the vulnerable adult or the caregiver or other person with authority over the vulnerable adult knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a vulnerable adult, regardless of whether physical harm results)	1 year
750.377a(1)(c)	Willful or malicious destruction or injury of the personal property of another person if the amount of the destruction or injury is \$200 or more but less than \$1,000, or if the amount of the destruction or injury is less than \$200 and the person has one or more prior convictions for violating MCL 750.377a or a local ordinance corresponding to it	1 year
750.377a(1)(d)	Willful or malicious destruction or injury of the personal property of another person if the amount of the destruction or injury is less than \$200	93 days

MCL	Description	Maximum imprisonment
750.380(4)	Willful or malicious destruction or injury of another person's house, barn, or other building or its appurtenances if the amount of the destruction or injury is \$200 or more but less than \$1,000, or if the amount of the destruction or injury is less than \$200 and the person has one or more prior convictions for violating MCL 750.380 or a local ordinance corresponding to it	1 year
750.380(5)	Willful or malicious destruction or injury of another person's house, barn, or other building or its appurtenances if the amount of the destruction or injury is less than \$200	93 days
750.411h(2)(a)	Stalking (defined as a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested)	1 year
750.520e	Criminal sexual conduct in the fourth degree as described in MCL 750.520e	2 years ²
750.540e	Malicious use of a service provided by a telecommunications service provider with intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy another person or to disturb the peace and quiet of another person by performing any of the actions described in MCL 750.540e	6 months

A person violating the above prohibition would be guilty of a felony punishable by imprisonment for up to five years or a fine of up to \$5,000, or both.

² Because its maximum term of imprisonment is two years, it appears that this offense could not be classed as a *misdemeanor involving domestic violence* under the bill, as the definition of that term limits it to offenses with a maximum term of imprisonment of not more than one year.

Definition of “felony”

The bill also would amend the definition of the term *felony* as follows:

Felony would mean a violation of a law of this state, or of another state, or of the United States that is punishable by imprisonment for *a term exceeding one year*, or an attempt to violate such a law.

This change would expand the offenses to which the current three-year firearms and ammunition prohibition would apply. It could also expand the offenses that could be considered specified felonies and thus subject to that five-year prohibition and reinstatement requirement. Both of these now apply to violations punishable by imprisonment for four or more years. Under the bill, they would apply to violations punishable by imprisonment for more than one year.

Part 2 of Chapter XVII of the Code of Criminal Procedure lists felonies subject to the chapter’s sentencing guidelines provisions and shows the maximum term of imprisonment for each. There appear to be nearly 200 offenses with maximum terms of imprisonment of two or three years that under the bill would be newly subject to the act’s felony prohibitions against possessing firearms or ammunition for specified periods.³ It is unclear how many of these would meet the criteria for a specified felony under the act.

In addition, violations of the laws of other states or of the United States that are punishable by more than one year of imprisonment, but less than four, also would be newly subject to those prohibitions, time periods, and conditions.

MCL 750.224f

House Bill 4945 would amend the sentencing guidelines provisions in the Code of Criminal Procedure to make complementary changes to descriptions language describing felony violations of section 224f of the Michigan Penal Code. (The sentencing guidelines now refer to the possession or sale of a firearm or ammunition by a “felon,” which the bill would change to “prohibited person.”) The bill cannot take effect unless HB 4946 is also enacted.

MCL 777.16m

FISCAL IMPACT:

House Bill 4946 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 2022, the average cost of prison incarceration in a state facility was roughly \$47,900 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$5,000 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The 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,

³ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-175-1927-XVII-2.pdf>

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.

House Bill 4945 is a companion bill to HB 4946 and amends sentencing guidelines to include felony status for a person convicted of a misdemeanor involving domestic violence to possess or sell a firearm or ammunition. The bill would not have a direct fiscal impact on the state or on local units of government.

Legislative Analyst: Rick Yuille
Fiscal Analyst: Robin Risko

■ 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.