

ALLOW STUN GUNS

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House Bill 4020 (H-1) as reported from committee

Sponsor: Rep. Michele Hoytenga

Committee: Judiciary

Complete to 1-8-20

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

BRIEF SUMMARY: House Bill 4020 would amend the Michigan Penal Code to allow the sale, possession, and reasonable use of a stun gun by a person who is 18 years of age or older.

FISCAL IMPACT: The bill may have fiscal implications for the state and local units of government. See **Fiscal Information**, below, for a detailed discussion.

THE APPARENT PROBLEM:

Michigan law currently prohibits the possession or use of portable devices that use electricity to injure, kill, or temporarily incapacitate, which includes devices such as stun guns. However, an exception allows certain individuals to possess and use a Taser, including individuals with a concealed pistol license who use a Taser for self-defense and law enforcement officers when on duty. (See **Background Information**, below, for a discussion of the differences between a stun gun and a Taser.)

Some believe that the state's ban on stun guns directly contradicts several state and federal judicial decisions that have held that stun guns fall under the Second Amendment's protection of the right to bear arms. In *District of Columbia v Heller*, the United States Supreme Court found that the right to bear arms extended to arms "that were not in existence at the time of the founding" and that a law completely banning the possession of protected arms in the home is unconstitutional.¹ Four years later, citing *Heller*, the Michigan Court of Appeals held in *People v Yanna* that a "complete ban on Tasers and stun guns in the home violates the Second Amendment" and that "a total prohibition of the open carrying of protected arms such as a Taser or stun gun is unconstitutional."² In 2016, in a per curiam decision, the U.S. Supreme Court, again citing *Heller*, vacated a Massachusetts appellate decision upholding that state's complete ban on stun gun possession and sent the case back to the state court for "proceedings not inconsistent" with its opinion.³

However, although a federal district judge declared last year that New York state's total ban on the possession and use of Tasers and stun guns by everyone and for all purposes, including in one's own home for self-defense, "must be declared unconstitutional," the judge also allowed for the possibility that "some restriction(s) on the possession and/or use of tasers and stun guns would be permissible under the Second Amendment."⁴ Indeed, the Department of State Police, among others, has expressed the view that Michigan's law regulating electric devices does not violate either the state or federal constitution because it is not a strict ban and

¹ *District of Columbia v Heller*, 554 US 570 (2008).

² *People v Yanna*, 297 Mich App 137 (2012).

³ *Caetano v Massachusetts*, 577 US __; 136 S Ct 1027 (2016).

⁴ *Avitabile v Beach*, 368 F Supp 3d 404 (NDNY, 2019).

does allow the use of Tasers by certain law enforcement related professionals and members of the general public who hold licenses to carry concealed pistols.

House Bill 4020 seeks to amend the law to allow any adult to possess a stun gun and use it for self-defense.

THE CONTENT OF THE BILL:

In general, the Michigan Penal Code prohibits the sale, offer for sale, or possession of a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed that is designed to incapacitate temporarily, injure, or kill. However, the act does allow peace officers, corrections officers, and certain court employees, among others, to possess and use a Taser while performing their official duties if they have received training in the use, effects, and risks of the device. Individuals who hold a license to carry a concealed pistol may also possess and reasonably use a Taser if they are trained in the use, effects, and risks of the device.

The bill would amend the act to allow the possession and reasonable use of a *stun device* by an individual who is 18 years of age or older. In addition, a provision that allows a manufacturer, authorized importer, or authorized dealer to demonstrate, offer or hold for sale, sell, give, lend, or deliver a Taser to a person authorized by law to possess such a device would be amended to also apply to a stun device.

Stun device would mean a device from which an electrical current is designed to immobilize an individual temporarily through the contact of the device held against an individual. The term would not include a launchable device.

Currently, an individual authorized to possess and reasonably use a Taser who uses it against another individual, except under circumstances that would justify the individual's lawful use of physical force, is guilty of a misdemeanor punishable for up to two years or a fine of up to \$2,000, or both. The bill would also apply that penalty to the improper use of a stun device. In addition, the act currently makes a violation of the general prohibition against the sale or possession of a device that uses an electric current to incapacitate another person a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both. That penalty would still apply to selling or possessing a stun device in violation of the bill.

MCL 750.224a

BACKGROUND INFORMATION:

Although the terms *Taser* and *stun gun* are often used interchangeably, they are different types of self-defense device.

A Taser, which is manufactured solely by Axon (formerly Taser International), temporarily incapacitates a target by disrupting the signals between the brain and muscles, shoots two prongs as projectiles, can be used at a distance of up to 15 feet for a civilian model (30 feet for law enforcement models), releases tags that identify the unit, and can be used as a stun gun after the projectiles are released.

A stun gun, by comparison, primarily utilizes pain to disable a target, requires physical contact (for some models, contact with skin), and may require up to three to five seconds of continuous contact in order to disrupt muscle control and disable a target.

Both device types are intended to be used for self-defense and are considered to be nonlethal. However, when used on a target with certain underlying medical conditions or used improperly (e.g., the target is in or near a body of water or on a ledge), the use of Tasers has resulted in death.

FISCAL INFORMATION:

The fiscal impact of the bill would depend on two things: 1) the number of people who would no longer be convicted of a felony under provisions of the bill that allow possession and reasonable use of a stun gun, resulting in reduced costs for the state and for local units of government and reduced penal fine revenue, and 2) the number of people who would be convicted of a two-year misdemeanor under provisions of the bill that prohibit use of a stun gun when such force is not justified, resulting in increased costs for the state and for local units of government and increased penal fine revenue. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Increased or reduced penal fine revenue would affect funding for local libraries, which are the constitutionally designated recipients of those revenues.

ARGUMENTS:

For:

State and federal law allow all people to defend themselves against attack by others, whether in the home or in public, and to protect others who are in imminent danger of physical harm. Many people prefer nonlethal forms of protection over firearms. It is clear from recent court cases that defensive devices using an electric current are considered to be among the “arms” protected under the Second Amendment and, as such, cannot be subjected to total bans on their possession or use in the home or in public.

The bill seeks therefore to amend state law to codify the decision of the Michigan Court of Appeals in *Yanna*. Under the bill, anyone 18 or older could carry and use a stun gun for purposes of defense without first having to obtain a concealed pistol license, as a person must do to carry a Taser. The lower age threshold under the bill for legal possession of a stun gun (an individual must be at least 21 to obtain a concealed pistol license) would allow more people to carry a device that can be used for self-protection.

Against:

Each of the court cases cited by proponents dealt with total bans on all electric arms. Even *Yanna*, the Michigan case, limited its finding of “unconstitutional” to a “total prohibition of the open carrying of protected arms such as a Taser or stun gun...” Michigan does not have a total ban on such devices, as an exception for the use and possession of Tasers by individuals holding a concealed pistol license took effect in 2012 (the same year as the *Yanna* decision).

Law enforcement had been authorized in statute to carry and use Tasers several years earlier. Although a few states continue to ban some or all electric current devices, many, if not most, do have some restrictions in place, such as not allowing felons to carry a stun gun or Taser outside the home but allowing such devices for in-home self-defense. Thus, the issue of whether Michigan's total ban on stun guns is unconstitutional may well be satisfied.

In addition, it has been pointed out, by members of law enforcement and others, that because stun guns must be used in close physical contact, a person faces a higher risk of being disarmed and having the device used against him or her. Tasers, on the other hand, can be used when an assailant is out of arm's reach and so provide a greater opportunity for a person to reach safety. Further, though they are touted as nonlethal, deaths have occurred from misuse of Tasers as well as from stun guns. Therefore, some restrictions on carrying certain defensive devices (such as are in place for Tasers) are within the constitutional purview of states as the government is tasked with protecting the public safety.

POSITIONS:

A representative of Michigan Open Carry testified in support of the bill. (12-3-19)

A representative of the Department of State Police testified in opposition to the bill. (12-3-19)

The Michigan Sheriffs' Association indicated opposition to the bill. (12-10-19)

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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.