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JUVENILE ACCESS TO EXPLOSIVES AND FIREARMS

House Bill 4641 (Substitute H-1)
Sponsor: Rep. Patricia Godchaux

House Bill 4642 (Substitute H-2)
Sponsor: Rep. Samuel Thomas III

House Bill 4643 (Substitute H-1)
Sponsor: Rep. Gary Woronchak

House Bill 4647 (Substitute H-1)
Sponsor: Rep. Ken Daniels

First Analysis (5-13-99)

Committee: Constitutional Law and Ethics

THE APPARENT PROBLEM:

In the wake of the murder of 13 people in Littleton, Colorado on April 20, 1999, many questions have been raised. One of the most important is, "what can be done to prevent something like that from happening here?" Many people look at what occurred and wonder how teenagers could get their hands on guns and ammunition and learn how to build and detonate explosives. Many feel that the ease of access to firearms and to information on explosives and access to explosives themselves helped to allow this terrible tragedy to occur. Legislation has been offered to place restrictions on juveniles' access to the sorts of implements used in the Littleton tragedy and to increase the penalties for violations of these restriction and some current restrictions.

THE CONTENT OF THE BILLS:

House Bill 4647 would amend the handgun licensure act (Public Act 372 of 1927, MCL 28.422 and 28.426) to increase the minimum age for a pistol license or a concealed weapon license from 18 to 21. However, a person who was 18 years old or older but under 21 could be qualified for a license to carry a pistol to and from his or her place of employment and in the course of his or her employment if carrying a pistol was required by the employer.

House Bills 4641-4643 would amend the Explosives Act of 1970 and sections of the Michigan Penal Code dealing with firearms and explosive or incendiary devices to add new felonies and penalties, and to increase the existing penalties, for certain existing felonies involving these weapons and devices.

House Bill 4641 would amend the Explosives Act of 1970 (MCL 29.45 and 29.55) to raise the minimum age for explosives permits (which currently is 18) to 21, and to increase the penalties for explosives crimes.

The Explosives Act of 1970 prohibits issuing a permit to people under 18, and requires a permit to handle, store, use, sell, buy, transport, or otherwise dispose of explosives. The act has various other requirements concerning the issuing of permits, a permit denial process, explosives dealer records, and storage of explosives. The act also prohibits handling explosives while drunk or under the influence of narcotics. Violations of the act's provisions are misdemeanors, with a mandatory fine of up to \$500 or imprisonment for up to one year or both.

The bill would change the mandatory misdemeanor penalties to permissible penalties and would add three new felonies to the act for selling or otherwise furnishing an explosive to an unlicensed individual,

House Bills 4641, 4642, 4643 and 4647 (5-13-99)

with the penalties increasing when the explosive was used in a crime or caused death or serious injury as the result of being used in a crime. It would be a felony, punishable by imprisonment for up to 4 years or a fine of up to \$2,500, or both, to sell explosives to an unlicensed individual. If the explosive were used in the commission of a crime, the person would be guilty of a felony punishable by imprisonment for up to 10 years or a fine of up to \$5,000, or both. If the explosive were used in a crime that caused death or serious injury ("serious impairment of a body function") to another individual, the person would be guilty of a felony punishable by imprisonment for up to 20 years or a fine of up to \$5,000, or both. A term of imprisonment for any of these new felonies could run consecutively to any other term of imprisonment imposed for another violation arising from the same transaction.

The bill would not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law committed while selling explosives to an unlicensed individual. The bill also would add to the act the definition of "serious impairment of a body function" that appears in the Michigan Penal Code, where the term is defined to include, but not be limited to, the loss of a limb or use of a limb; the loss (or the loss of the use) of a hand, foot, finger, or thumb; the loss (or the loss of the use) of an eye or ear; serious visible disfigurement; a comatose state that lasts for more than three days; measurable brain damage or mental impairment; a skull fracture or other serious bone fracture; or subdural hemorrhage or subdural hematoma.

House Bill 4642. Currently, section 528a of the Michigan Penal Code, which was added to the code in 1986 to prohibit paramilitary training, prohibits teaching or demonstrating how to use or construct firearms, explosives or incendiary devices if the teacher or demonstrator knows or intends that knowledge will be used in a "civil disorder" ("any public disturbance involving the use of any firearm, explosive, or incendiary device by 3 or more assembled persons which causes an immediate danger to, or which results in damage or injury to, any property or person"). The act also prohibits assembling ("with one or more persons") for the purpose of training or practicing with, or being taught, how to use firearms or explosive or incendiary devices, with the intent to use them in (or in furthering) a civil disorder. Violations of these provisions are felonies with unspecified penalties,

which means at least 4 years' imprisonment and a fine of up to \$2,000.

The bill would amend this section of the penal code (MCL 750.528a) to specify that the prohibition applied to teaching or demonstrating "in person or through the use of any media" -- including, but not limited to computers ("the Internet, a computer, computer program, computer network, or computer system"), and to increase the penalties for violating this prohibition. However, an internet service provider or computer service provider would not be in violation, unless the provider had actual knowledge that what was being taught or demonstrated was intended to be used in, or would be used in, or in furtherance of, a civil disorder. A violation or attempted violation through the use of any media would be considered to have occurred if the communication originated, terminated, or both originated and terminated in this state.

Violations would be felonies, with penalties based on the amount of damage resulting from the crime. The fine for a simple violation would be increased to \$2,500. If the firearm or explosive or incendiary device were used in a civil disorder, the violation would be a felony punishable by imprisonment for up to 10 years or a fine up to \$5,000, or both. If the use of the firearm or device caused death or serious injury ("serious impairment of a body function") to another individual, the penalty would be up to 20 years' imprisonment or a fine up to \$5,000, or both. Terms of imprisonment imposed for violating this section of the penal code (including the proposed additions) could run consecutively to any other term of imprisonment imposed for another violation arising from the same transaction.

The bill would not prohibit a person from being charged with, convicted of, or sentenced for violating any other law committed while violating this section of the penal code. The bill also would define "computer network," "computer program," "computer system," "device," and "Internet," as well as adding the definition of "serious impairment of a body function" that currently is in the penal code.

House Bill 4643. Public Act 206 of 1998 added a new explosives felony to the explosives chapter (Chapter 33) of the penal code. Under section 209a, having an explosive substance or device in a public place with the intent to "terrorize, frighten, intimidate, threaten, harass, or annoy" any other person is a

felony punishable by up to 10 years imprisonment or a fine of up to \$10,000, or both. Public Act 207 of 1998 also amended Chapter 33 of the penal code to make it a separate felony, punishable by a concurrent term of imprisonment for up to 20 years, to commit a Chapter 33 (explosives) violation against a "vulnerable target" (defined as a child care or day care center, a health care facility or agency, a building or structure open to the general public, a place of religious worship, or a public, private, or religious school, college, or university) that resulted in death or serious injury to another person. The bill would amend these sections of the penal code (MCL 750.209a and 750.212a) to add three new felonies to section 209a, one new felony to section 212a, to increase the penalties for the existing felonies, and to add penalties for the new felonies.

More specifically, the section 209a felony of having an explosive substance or device in a public place with the intent to terrorize, frighten, intimidate, threaten, harass, or annoy any other person would be punishable by imprisonment for up to 15 years (instead of 10 years) or a fine of up to \$10,000 (as currently), or both. If the possession damaged someone else's property, the person would be guilty of a felony punishable by imprisonment for up to 20 years or a fine of up to \$15,000, or both. If the violation physically injured another person, other than the serious impairment of a body function, the violator would be guilty of a felony punishable by imprisonment for up to 25 years or a fine of up to \$20,000, or both. And if the violation caused serious impairment of a body function to another individual, the violator would be guilty of a felony punishable by imprisonment for life or any term of years or a fine of up to \$25,000, or both.

If a person violated Chapter 33 of the penal code and the violation were committed in, or directed at, a vulnerable target, the person would be guilty of a felony (as currently) for life or any term of years (instead of up to 20 years). If the violation resulted in death or serious impairment of a body function of another individual, the violator would be guilty of a felony and would be imprisoned for life without the possibility of parole.

All of the bills would take effect on August 1, 1999.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

As the Littleton shootings illustrate, teens apparently can gain access to deadly weapons with altogether too little difficulty. What is needed are not only further restrictions on the access teens have to such weapons, but also prohibitions against supplying teens with things like guns and explosives. Maybe there are plenty of 18 year olds who are mature enough to be allowed access to guns and explosives, but there will probably an even larger percentage of them who are mature enough when they reach the age of 21. It is presumed that youths change and mature a great deal in those first few years after high school. Looking at what has happened recently, it seems that giving kids a couple more years to mature before they are allowed to buy guns or explosives probably won't hurt anybody and it might help prevent a tragedy like what occurred in Littleton.

Against:

Generally, prohibitions like these have little deterrent effect on people who are determined to harm others. The age of majority in Michigan is 18; by the time a person reaches that age, he or she is allowed to vote, get married, own property, make contracts and get into debt. One would hope that if they are allowed all of these opportunities that they are also mature enough to purchase a gun.

These bills are apparently an attempt to try to do something about a tragedy that cannot be understood. Since no one can figure out why those kids would kill all those people, it is proposed to prohibit other kids from having access to guns, bombs, and information about bombs. Obviously, the two boys' behavior was not caused by their access to guns, bombs, and such information on the internet -- other kids had the same access but somehow restrained themselves from murdering their classmates. It seems apparent that the problems of those who commit crimes like what occurred in Littleton are based upon something more than their ability to buy guns and explosives. The essence of the problem in Littleton was not the access to these weapons, it was that these two were willing to use them on people they knew for no apparent reason other than to kill. Until that problem can be addressed, all the restrictions on access will only manage to slightly hamper the efforts of the next person who would commit such a crime.

Response:

Perhaps a determined individual under the age of 21 will still be able to get weapons and/or information

about how to build them even if these bills are enacted; however, if the bills serve to deter even one somewhat less determined individual they will be worth the effort. Further, by imposing penalties on people who would supply weapons and such information, the bills will limit access and, if that is insufficient, then at least the changes in the penalty provisions will provide for serious punishments for those who violate these laws.

POSITIONS:

There are no positions on the bills.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.