

EXPAND POSSESSION & USE OF TASERS

Senate Bill 29 as passed by the Senate
Senate Bill 93 (Substitute H-1)
Sponsor: Sen. Goeff Hansen

Senate Bill 30 (Substitute H-2)
Sponsor: Sen. Rick Jones
House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (4-17-12)

BRIEF SUMMARY: The bills would amend various acts to:

- Include a holder of a concealed pistol license (CPL) among those allow to use and possess an electro-muscular disruption device (EMD).
- Subject possession and use of an EMD by a CPL holder to the same requirements and prohibitions as for a concealed pistol.
- Include a reserve peace officer among the peace officers authorized to carry and use an EMD in the performance of official duties.
- Add a court officer to the list of persons authorized to carry a concealed pistol or an EMD in a no carry zone.
- Establish a two-year misdemeanor penalty for the unlawful use of an EMD by a person authorized to possess and use an EMD and place that penalty in the sentencing guidelines.
- Retain the general ban on possessing, selling, or offering to sell a stun gun or other device delivering an electric current, impulse, wave, or beam designed to temporarily incapacitate or injure or kill. (Under state law and the bill, only EMD devices are allowed and then only by authorized individuals.)

FISCAL IMPACT: To the extent that the bills' exemptions result in fewer misdemeanor and/or felony convictions related to the unlawful use of EMD devices, it could reduce costs on state and local correctional systems. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,200 per supervised offender per year. The costs of local incarceration in a county jail and misdemeanor probation supervision vary by jurisdiction. Any decrease in penal fine revenues would reduce

funding for local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

In general, the sale or possession of stun guns and their ilk is strictly prohibited. A narrow exception is made for a device using electro-muscular disruption technology (EMD) and that delivers the shock through probes attached to wires. The devices, known as Tasers, also dispel "tags," which are confetti-type objects that contain identification and tracking information traceable to the purchaser. Only certain persons are lawfully authorized to possess or use an EMD and then only if trained in the use, effects, and risks of the device and only when using the device while performing official duties. The exemption applies to a peace officer, certain Department of Corrections' employees and local corrections officers, probation officers, court officers, pilots and aircraft crew members, and licensed private investigators, among a few others.

Some believe that civilian model EMD devices (Tasers) should be allowed as personal protection devices for individuals who are licensed to carry concealed pistols. A civilian or consumer model Taser deploys probes up to a distance of 15 feet and delivers an electrical charge for 30 seconds. The intent is to provide a 30-second window for the intended victim to escape. Once the probes are deployed, the Taser can be dropped at the scene and the intended victim can seek safety or assistance. When a Taser is used for self-defense purposes, the company will provide a replacement device if the owner provides a copy of an official police report and proof of ownership. Proponents say that allowing the possession and use of an EMD device would offer CPL holders a nonlethal option for self-defense.

In a related matter, there have been several legislative attempts to add reserve police officers to the list of professionals authorized to possess and use an EMD device in the performance of official duties. It has also been suggested that a court officer who holds a concealed pistol license be allowed to carry a concealed pistol or EMD device in a no carry zone. Legislation has been offered to address all of these concerns.

THE CONTENT OF THE BILLS:

The bills would all take effect 90 days after enactment. Senate Bills 29 and 30 are tie-barred to each other, and Senate Bill 93 is tie-barred to both of the other two bills. A detailed summary of each bill follows.

Senate Bill 29 would amend the Michigan Penal Code (MCL 750.224a). The bill would do the following:

- Allow the possession and reasonable use of an EMD device by an individual with a valid concealed pistol license and who has been trained as specified in the bill regarding the use, effects, and risks of the device.

- Require an authorized dealer or other person who sells an EMD device to a CPL holder to verify the person's identity and possession of a valid CPL. The dealer or seller must also, at the time of sale, provide training on the use, effects, and risks of the device. A violation of these provisions would be a misdemeanor punishable by up to 30 days in jail and/or a fine of not more than \$500.
- Make using an EMD device against another person, **except** under circumstances that would justify the individual's lawful use of physical force, a high court misdemeanor punishable by imprisonment for not more than two years and/or a fine of not more than \$2,000. This penalty would apply to all persons authorized to possess and use an EMD device, including peace officers.
- Include a reserve police officer, as defined in PA 372 of 1927, in the definition of "peace officer," thus authorizing these individuals to possess and use EMD devices in the performance of their duties.
- Retain the current prohibition on the sale, offer for sale, or possession of a portable device or weapon that emits an electrical current, impulse, beam, or wave designed to incapacitate temporarily, injure, or kill. The bill also retains the four-year felony penalty for a violation of the ban.

In addition, to be a lawful EMD for purposes of the act, the device must contain an identification and tracking system that dispenses coded material traceable to the purchaser through records kept by the manufacturer, and the manufacturer must have a policy of providing that information to a police agency upon written request by that agency. The bill would specify that this provision would not apply to a launchable device used only by law enforcement agencies.

Senate Bill 30 would amend the handgun license act, Public Act 372 of 1927 (MCL 28.425f et al.) to apply to EMD devices provisions that currently pertain to persons carrying a concealed pistol under a concealed pistol license (CPL). These provisions are as follows:

- Require a CPL holder to keep the CPL license in his or her possession at all times an EMD device is being carried.
- Require a CPL holder carrying an EMD device to show the CPL license and a driver license or state ID card to a peace officer upon request.
- If stopped by a peace officer, require a CPL holder to immediately disclose to the officer if he or she is carrying an EMD device on his or her person or in the vehicle.
- Subject an EMD device carried in violation of the above provisions to immediate seizure by a peace officer. A CPL holder would follow the same procedure to obtain the confiscated device as is currently in place for concealed pistols.

- Subject an EMD device carried in violation of the handgun license act to seizure and forfeiture under provisions of the Revised Judicature Act in the same manner as for concealed pistols.
- Prohibit carrying an EMD device while under the influence of alcohol or a controlled substance or while having any bodily alcohol content prohibited under Section 5k. Violators would be subject to the listed penalties that currently apply to carrying a concealed pistol under the same conditions.
- Allow a person who has any bodily alcohol content to transport an EMD device in the locked trunk of his or her motor vehicle or a vehicle in which he or she is a passenger. If the vehicle lacks a trunk, allow the EMD device to be transported in a locked compartment or container.
- Allow an EMD device to be transported on a vessel if in a locked compartment or container.
- Allow a peace officer having probable cause to believe a person was carrying an EMD device in violation of the provisions pertaining to having any bodily alcohol content or controlled substances to require the person to submit to a breathalyzer test or blood or urine test in the same manner pertaining to persons suspected of carrying a concealed weapon under the same circumstances.
- Prohibit a CPL holder who is carrying an EMD device from carrying that device into a no-carry zone such as a school, stadium, or hospital.
- Include a court officer in the list of individuals licensed under the act who may carry a concealed pistol in a no-carry zone and allow all of the listed individuals to also carry an EMD device into a no-carry zone.

Senate Bill 93 would amend the Code of Criminal Procedure (MCL 777.11b) to specify that the improper use of an EMD device would be a Class G felony against the public safety with a two-year maximum term of imprisonment. The bill would also revise the sentencing guideline pertaining to a third or subsequent offense for carrying a concealed pistol in a no-carry zone to also apply to an EMD device. The penalty carries a maximum term of imprisonment of four years.

HOUSE COMMITTEE ACTION:

The changes made by the House substitutes for Senate Bills 30 and 93 were primarily technical and/or editorial in nature. Substantive changes made by the H-2 substitute for Senate Bill 30 includes applying the seizure and forfeiture provisions applicable to concealed pistol violations to violations involving carrying an EMD device; requiring the CPL to be carried whenever an EMD device is being carried, and requiring a CPL holder to show a driver license or state ID upon request by a peace officer when carrying an EMD device.

BACKGROUND INFORMATION:

Bill packages to expand the use of Tasers by to concealed pistol license holders and/or reserve peace officers and other professions were introduced in the last two legislative sessions.

An EMD device can be fired up to 15 feet away, whereas a typical stun gun must make direct contact with an attacker. Persons impervious to pain or with high pain tolerances may be able to withstand the shock from a stun gun whereas an EMD device incapacitates an attacker by blocking the nerve impulse signals from the brain to the muscles of the lower extremities, regardless of a person's pain tolerance. That is why people typically fall to the ground if struck by a probe from an EMD device. The electrical charge from a probe can also be transmitted through clothing - direct contact with skin is not needed. The current from an EMD device delivers a shock for 30 seconds; however, an attacker needs an additional minute or more to regain his or her balance and wherewithal. This gives an intended victim time to drop the device and run for help. When used for self-defense, Taser will replace a device (about \$400) if an official police report and proof of ownership is presented.

Though there is no conclusive evidence that EMD devices pose a significant risk of injury or death, in particular cardiac arrest, there are guidelines and policies in place by the manufacturer and law enforcement agencies. For instance, the probes should not be aimed at a person's head or upper, front chest. The device should not be used against a person standing in or near a pool or body of water as drowning may occur. Serious injury or death may occur if the person being Tased is standing on a sloping surface, ladder, stairs, tree, or other elevated area. The device should not be deployed near flammable materials such as gasoline, explosives, aerosol sprays, or the flammable propellant used in pepper sprays. Prolonged or repeated exposure should also be avoided. People with some underlying conditions such as drug or alcohol intoxication, mental illness, agitated state or delirium, and medical conditions such as heart disease, sickle cell trait, and others may be at more risk of experiencing an adverse event leading to death. (Information derived from the National Institute of Justice Special Report entitled "Study of Deaths Following Electro Muscular Disruption", May 2011. For a copy of the full report, go to www.nij.gov.)

ARGUMENTS:

For:

Senate Bills 29 and 30 would allow a person with a concealed pistol license to also possess and use a type of stun gun that uses electro-muscular disruption technology. Currently, only Taser International manufactures such devices. These devices shoot wires with probes attached at the end. The probes deliver an electric current that temporarily incapacitates an attacker by blocking the nerve transmission from the brain to the muscles of the lower extremities, causing most individuals to collapse to the ground. The devices also deploy "tags" that allow law enforcement, with the assistance of the manufacturer, to

identify the owner of a device that had been deployed. All other types of stun guns and electrical current devices would remain illegal in the state, even for peace officers.

The main argument offered in support of the bills is that the consumer model of a Taser would provide Michigan residents with a nonlethal, but effective, tool for self-defense. Many people are hesitant to carry or use a pistol, or fear having one in the house if children are present. Tasers are a safer alternative to the deadly force posed by firearms and are more reliable than pepper spray, which can be blown in the victim's face by the wind. Michigan is one of only seven states that do not allow civilian use of stun gun technology and the bills represent a conservative and responsible approach by requiring both training and licensing and limiting the type of device to one that, if used against another person, is easily traceable to the owner.

For:

The legislation would not allow just anyone to legally buy or use an EMD device. Under the bills, in order to purchase and carry an EMD device, a person would have to obtain a concealed pistol license, though he or she would not have to buy a pistol. The same laws that apply to carrying or transporting a concealed pistol would apply to an EMD device and a person violating those laws could be subject to civil infractions or criminal penalties, depending on the offense. For example, using the device when lawful physical force is not justified would be a criminal offense punishable as a two-year misdemeanor, which is treated under law as a felony.

In addition, before or at the time of purchase, a CPL holder would have to be trained on the use, effects, and risks of using an EMD device. This is an important requirement because even though considered to be a safer alternative to using a firearm, there are instances in which an EMD device should not be used or should be used with caution. For instance, some do not recommend EMD devices in domestic violence situations, as the batterer is likely to know of the device's existence and can use it against the person being abused. Moreover, an attacker or presumed attacker would be at risk for injury or death from a fall if he or she were on a slope, stairwell, ladder, ledge, or other high place. A CPL holder could be civilly liable if he or she injured an innocent person mistaken for a threat.

Response:

Peace officers are currently authorized to carry and use EMD devices while on duty. They currently are exempt from having to obtain a CPL in order to carry their service revolvers when off duty and are also exempt from the ban on carrying concealed weapons in a no carry zone. Would a peace officer have to undergo the full training required for a concealed pistol permit and obtain a CPL if they wished to carry a civilian model Taser when off duty?

For:

Senate Bill 29 would include reserve peace officers in the list of professionals authorized to possess and use EMD devices in the course of their official duties. As defined in current law, a "reserve peace officer," "auxiliary officer or "reserve 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 this act (MCL 28.421).

Many local police agencies use reserve peace officers to supplement their law enforcement efforts. 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. Even though not MCOLES certified, as police officers are, reserve officers are authorized to obtain concealed pistol permits and to carry those weapons into no carry zones. These officers would receive the same training in the use and risks of EMD devices as the other listed professionals authorized to possess and use the devices.

For:

In order to be exempt from the general ban on stun guns, an EMD device must dispense coded tags traceable to the purchaser when deployed. However, a newer type of EMD device that launches a grenade-type device up to 100 meters does not send out a shower of the coded tags. These devices are only available to law enforcement. Senate Bill 29 would also exempt these devices from the general ban.

Against:

Senate Bill 29 requires an authorized dealer or "other person" who sells an EMD device to verify the person's identity and possession of a CPL, among other things. However, the bill does not define this term. Although another provision in the same statute authorizes only a manufacturer, authorized importer, or authorized dealer to offer for sale or sell, give, or deliver an EMD device to a person authorized to possess such a device, some could interpret "other person" as allowing any individual to resell his or her own (or someone else's) device to another person. Sales of used stun guns, including EMD devices, are very popular on Internet sites such as EBAY and in other venues, especially by people wanting to upgrade to more expensive or newer models. Only authorized dealers, their employees, manufacturers and authorized importers would have the ability to properly verify if a person was a CPL holder and to provide the necessary training, as well as have the paperwork so that if an EMD device was deployed, the tags would be traceable to the proper owner. If the intent was to allow an employee of an authorized dealer to make the sale, the bill should be further amended to clarify this point.

In addition, the penalty for an authorized dealer or "other person" who sells an EMD device without the required verification or training would be subject to only a minor misdemeanor, with no enhanced penalties for repeat violations or even a mechanism to track problem offenders. If the penalty were at least raised to 93 days, it would provide a mechanism for law enforcement to track problem dealers or other individuals without necessarily resulting in longer jail sentences or jail overcrowding if a judge imposed only a fine.

Against:

The training that law enforcement officers and other professionals undergo in the safe and appropriate use of Tasers far exceeds what is likely for consumers under Senate Bill 29. Though the bill requires that a CPL holder receive training on the use, effects, and risks of an EMD device, it does not specify what level of training would satisfy the requirement. The training provided to consumers is likely to consist of a DVD with a demonstration of how to use the device, but could be as minimal as a sheet of paper with a few guidelines and instructions on how to point and fire the device.

Expanding the use of EMD devices to undertrained consumers is of concern to some because at least 500 people have died in the US since 2001 after being shocked with Tasers by law enforcement officers during an arrest or while in jail, according to Amnesty International. (Amnesty International, "USA: Stricter limits urged as deaths following police Taser use reach 500", Feb. 12, 2012) Though most of these deaths were attributed to other causes and not a direct result of being tased, at least 60 have been attributed - in whole or as a contributing factor - to being shocked by an EMD device.

Besides death, the use of EMD devices has led to injuries due to falls after being shocked, brain damage leading to seizures from probes penetrating the skull, and blindness from probes penetrating an eyeball. In addition, controversy remains over whether direct shots to the chest can result in fatal arrhythmias. This has led to Taser International issuing a guideline to law enforcement agencies that direct shots to the front of the upper chest be avoided. Intoxication from controlled substances or alcohol, mental illness, and several other underlying medical conditions can also increase the risk of a person having an adverse event if shocked by an EMD device.

The point is, law enforcement officers are trained in the quick assessment of a threat, decision making under pressure, and when and under what circumstances to use physical force. Yet, in a review of hundreds of Taser deaths by law enforcement, Amnesty International reports that 90 percent of those who died were unarmed and that the majority of those who died did not pose a serious threat at the time of being shocked. For example, Amnesty International cites a November 2011 incident in which a North Carolina man died after a police officer shocked him with a stun gun while the man was riding a bicycle. The man had a disability and hearing problems but was shocked by the officer because he did not respond to an order to pull over. Media stories also report incidents of officers tasing a man on a second story ledge (he fell to his death), in trees, or repeatedly shocking persons after being handcuffed as they lay on the ground.

Several Michigan teens have also died after being shocked by EMD devices by law enforcement officers. The most recent Michigan death occurred on April 10, 2012, when an unarmed Saginaw man died shortly after being tased by officers. What is known is that deaths and injuries are occurring at the hands of well-trained officers deploying EMD devices. It is unknown at this time what the effect will be regarding deaths and injuries if the use of EMD devices is expanded to a segment of the civilian population who are not as well trained. It is also not known how many CPL holders would buy a Taser and how many people would obtain a CPL license with the intent to buy and carry

only a Taser. Because Tasers are touted as being non-lethal and safe, more people may be inclined to carry one and discharge it if felt threatened than would carry and/or fire a concealed pistol under similar circumstances. This could increase the number of individuals killed or injured after being shocked by an EMD device.

Response:

The two-year, high court misdemeanor contained in Senate Bill 29 for using an EMD device when physical force is not justified will be a strong deterrent for misuse of the devices, whether by consumers or police officers and the other listed professionals currently allowed to use the devices in the performance of their official duties. Though there have been some deaths and injuries, overall, a 2011 Department of Justice study found that deaths and injuries to suspects and law enforcement officers alike have been reduced greatly by the use of EMD devices over other weapons and techniques of subdual. Significant problems have not been experienced by the other states that allow use of stun guns and EMD devices.

POSITIONS:

A representative of Michigan Taser testified in support of the bills on 2-16-12 and indicated support on 3-22-12.

The Michigan State Police indicated support for the bills. (2-16-12)

The Michigan Coalition for Responsible Gun Owners indicated support for the bills. (2-16-12 and 3-22-12)

Michigan Open Carry, Inc. indicated support for the bills. (2-16-12 and 3-22-12)

Michigan Court Officers, Deputy Sheriff & Process Servers Association indicated support for the bills. (2-16-12)

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■ 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.