

Legislative Analysis



PROHIBIT GUNS AT ELECTION LOCATIONS

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<http://www.house.mi.gov/hfa>

House Bill 4127 (H-4) as passed by the House
Sponsor: Rep. Penelope Tsernoglou

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

House Bill 4128 as passed by the House
Sponsor: Rep. Stephanie A. Young

Committee: Elections
Complete to 12-1-23

SUMMARY:

House Bills 4127 and 4128 would amend the Michigan Penal Code to make it illegal to possess a firearm at a polling place or at a counting board location, respectively. Violations would be punishable by up to 90 days' imprisonment or a fine of up to \$100, or both.

House Bill 4127 would generally prohibit the possession of firearms at the following locations during the specified time periods:

- Inside a polling place or within 100 feet of an entrance to a building used as a polling place while the polls are open on election day.
- Inside an early voting location or within 100 feet of an entrance to a building used as an early voting location on any day that early voting is conducted at that location.
- Within 100 feet of an absentee ballot drop box during the 40 days prior to an election.
- Inside a city or township clerk's office or official satellite office, or within 100 feet of an entrance to those offices, during the 40 days prior to an election, if a voter can drop off their absentee ballot in person with their city or township clerk.

The prohibition would not apply to peace officers acting in the course of their duties, individuals carrying a concealed pistol with a valid license, individuals who possess a firearm in their residence or on their private property within 100 feet of an election location described above, or individuals lawfully transporting or possessing a firearm in their vehicle within 100 feet of an absentee ballot drop box.

MCL 750.234d

House Bill 4128 would generally prohibit the possession of firearms at absent voter counting board locations and combined absent voter counting board locations, and within 100 feet of entrances to those locations, while absent voter ballots are being processed. The ban would not apply to uniformed police officers acting in the course of their duties.

MCL 750.234d

BACKGROUND:

In October 2020, Michigan Secretary of State Jocelyn Benson issued a directive prohibiting the open carry of firearms in or within 100 feet of polling places, absent voter counting boards,

and clerks' offices on election day in an effort to prevent voter intimidation.¹ However, a Michigan Court of Claims ruling struck down the directive. That decision was upheld by the Court of Appeals, which noted that Michigan law prohibits both voter intimidation and brandishing a firearm in public (meaning pointing, waving about, or displaying the firearm in a threatening manner with the intent to induce fear in another person).²

In June 2022, the United States Supreme Court ruled in *New York State Rifle & Pistol Association v. Bruen* that states generally cannot prohibit the possession of firearms in public, except for sensitive places.³ Although the Court did not define "sensitive places" in the *Bruen* ruling, it lists "legislative assemblies, polling places, and courthouses" as examples of locations historically understood to qualify as sensitive and thus subject to permissible state regulation.⁴ Twelve states, Puerto Rico, and the District of Columbia currently prohibit the possession of guns and other weapons at polling places, according to the National Conference of State Legislatures.⁵

FISCAL IMPACT:

House Bills 4127 and 4128 would have an indeterminate fiscal impact on local units of government. The number of convictions that would result under provisions of the bills is not known. Violations would be misdemeanors, and new misdemeanor convictions would result in increased costs related to county jails or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bills affected 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.

POSITIONS:

Representatives of the following entities testified in support of the bills (2-28-23):

- Department of State
- East Lansing Interim City Clerk
- Anti-Defamation League
- Moms Demand Action for Gun Sense
- Voters Not Politicians

¹ The directive can be found here: https://www.michigan.gov/sos/-/media/Project/Websites/sos/03mcalpine/BOE_Open_Carry_Polling_Place_Instructions_10_16_2020.pdf?rev=0282cdc8925d4baab1532993bf8715e2&hash=839FEB64CC61F3374F4354BD235FDF21.

² It is currently illegal for an election challenger to intimidate a voter at a polling place under section 733 of the Michigan Election Law, and most individuals are generally prohibited from brandishing a firearm in public under section 234e of the Michigan Penal Code. The Court of Appeals opinion can be found here:

https://www.courts.michigan.gov/4b0580/siteassets/case-documents/uploads/coa/public/orders/2020/355265_14_01.pdf.

³ <https://www.scotusblog.com/2022/06/in-6-3-ruling-court-strikes-down-new-yorks-concealed-carry-law/>.

⁴ https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf#page=27.

⁵ The full list of states and territories that ban guns at polling places can be found here: <https://www.ncsl.org/elections-and-campaigns/polling-places#guns>.

The following entities indicated support for the bills:

- Department of the Attorney General (2-28-23)
- Lansing City Clerk (3-7-23)
- American Association of University Women of Michigan (2-28-23)
- American Civil Liberties Union Michigan (2-28-23)
- Brady United Against Gun Violence (2-28-23)
- Center for Change Northern Michigan (2-28-23)
- Detroit Disability Power (2-28-23)
- Giffords (2-28-23)
- League of Women Voters (3-7-23)
- Michigan Association of Municipal Clerks (2-28-23)
- Michigan Democratic Party (2-28-23)
- Progress Michigan (2-28-23)
- Promote the Vote (2-28-23)
- Protect Democracy (3-7-23)

The Campaign Legal Center Action indicated support for House Bill 4127. (3-7-23)

Representatives of the following entities testified in opposition to the bills (2-28-23):

- Great Lakes Gun Rights
- Michigan Coalition for Responsible Gun Owners
- Michigan Open Carry Inc.
- Pure Integrity for Michigan Elections

The National Rifle Association Institute for Legislative Action indicated opposition to the bills. (3-7-23)

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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.