

REVISE BOMB CRIME PENALTIES

House Bill 4289 as enrolled
Public Act 206 of 1998
Sponsor: Rep. Mark Schauer

Senate Bills 97 and 997 as enrolled
Public Acts 208 and 209 of 1998
Sponsor: Sen. Dianne Byrum

Senate Bill 443 as enrolled
Public Act 209 of 1998
Sponsor: Sen. Gary Peters

House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (8-24-98)

THE APPARENT PROBLEM:

Chapter 33 of the Michigan Penal Code deals with explosives and bombs. Provisions in this chapter govern the transportation of explosives on "common carriers" for passengers, sending or placing explosives (or fake devices made to look like explosives) with the intention of causing property damage or hurting or scaring someone (whether or not anyone is actually hurt or anything is actually damaged), and making or having explosives with the intent to use them unlawfully. Chapter 33 violations (with one exception, a misdemeanor) are felonies, with punishments generally ranging from imprisonment for from five years to life without parole, though some "bomb" felonies do not have specified punishments (which means that the punishment is that set in the penal code for "unspecified felonies," which is up to 4 years imprisonment or a fine of up to \$2,000, or both).

In 1995, members of an extended family from Battle Creek were stopped by the state police in Lansing on a traffic violation and were subsequently arrested when the police discovered weapons and a bomb that the family members reportedly intended to use to kill someone in Lansing. The police arrested the family members after finding the weapons and bomb. Because the occupants of the van were stopped before they had succeeded in actually delivering the bomb, the most they could be charged with was for transporting the bomb, with a maximum punishment of only five years imprisonment. Had the family

embers actually delivered the bomb, under current law the sentence could have been life in prison without parole. In light of this incident, legislation has been introduced to update and increase the penalties for bomb (and other) explosives crimes.

THE CONTENT OF THE BILLS:

House Bill 4289 and Senate Bills 97 and 443 would rewrite Chapter 33, the "explosives and bombs" chapter, of the Michigan Penal Code (MCL 750.200 et al.), generally increasing the penalties for crimes involving harmful or offensive substances or devices. The bills would add six new sections to the penal code, repeal five current sections, rewrite eight sections, and leave four current sections unchanged. The bills would add new crimes to Chapter 33 (including crimes involving the unlawful use of harmful biological, chemical, or radioactive substances) and would revise the current list of crimes and their penalties, including substituting a series of felonies with mostly standardized graduated penalties for a number of criminal actions that currently are individual felonies. The bills also would rewrite much of the "intent" language in Chapter 33 and revise the list of substances and devices to which the chapter would apply, including adding reference to harmful biological or radioactive substances or devices. Senate Bill 443 also would retitle this chapter of the penal code "Explosives, bombs, and harmful devices," and would add a definition section.

Senate Bill 997 would amend the Department of Corrections law (MCL 791.234 and 791.236) to prohibit parole for prisoners who had been sentenced to life imprisonment for violating Chapter 33 of the penal code. Currently under Chapter 33 of the penal code, the only crime that carries a life sentence is the felony of placing gunpowder or an explosive substance with the intent to destroy property but that results in injury to someone upon explosion (Section 207). Someone convicted of this crime is not eligible for parole. Under House Bill 4289 (Sections 204 and 211a), Senate Bill 97 (Sections 207, 209, and 210), and Senate Bill 443 (Sections 200i and 200j), a nonparolable life sentence would be imposed for any of seven "Chapter 33" felonies that resulted in someone's death (Sections 200i, 200j, 204, 207, 209, 210, and 211a), and could be imposed for any of six felonies that resulted in serious impairment to a body function (Sections 200i, 204, 207, 209, 210, and 211a).

All four bills would take effect on October 1, 1998.

More specific details on the crimes, their punishments, intent language, and the materials that would be covered under the revised Chapter 33 of the penal code follow below.

Crimes. Currently, Chapter 33 of the penal code criminalizes certain actions involving explosives or bombs. All of the crimes are felonies, with the exception of criminal actions involving the false marking of "high" explosives, which is a misdemeanor. (According to the Science and Technology Division of the Legislative Service Bureau, "high" explosives are those which have a nitroglycerine base and require a detonator.) Sections of this chapter of the penal code criminalize actions involving the transportation of explosives by common carriers (Sections 200, 201, and 202); unmarked, or falsely marking, high explosives (Section 212); the use of fake bombs to terrorize people (Sections 204a, 205a); the use of (or aiding or abetting in using) explosives with the intent to injure people (Section 204) or to destroy property (Sections 205, 206, 207, 208); the use of "foul, offensive, or injurious" substances with the intent to molest or injure people or their property or businesses, or for the purpose of creating a distinctive odor associated with gas with the intent to alarm someone (Section 209); the manufacture or possession of explosive, foul, or incendiary materials with the intent to use them "unlawfully" against people or their property (Sections

210, 211, 211a); and the unlawful use of various forms of valerium, (Section 210a), including valeric acid (which *Webster's New Collegiate Dictionary* defines, in part, as "a liquid acid of disagreeable odor obtained from valerian or made synthetically and used especially in organic synthesis").

Currently, with the one misdemeanor exception, Chapter 33 specifies that "any" person who "shall" do (or who does) certain things with various materials and with a certain intent "shall be" (or is) guilty of a felony (though Sections 201 and 212 specify that "no person shall" do certain things, Sections 202 and 212 require certain actions or markings, and Section 202 makes certain actions "unlawful."). The bills generally would prohibit certain actions, criminalize violations of the prohibitions, and specify penalties for most of the crimes. More specifically, the bills would revise the chapter's list of crimes as follows:

- (1) Section 200: House Bill 4289 would prohibit transporting explosives ("dynamite, gunpowder, or any other explosive") on "any vessel, car, or vehicle of any description" operated by a common carrier and carrying passengers for hire (the bill would change the penalty, as indicated in the "penalty section" below). As currently is the case, a violation of this section would be a felony.
- (2) Section 200i: Senate Bill 443 would add a new section prohibiting the manufacture, delivery, possession, transportation, placement, use, or release of harmful biological or chemical substances or devices or harmful radioactive materials or devices "for an unlawful purpose." Depending on whether or not the violation resulted in property damage or personal injury (and, if personal injury resulted, on the severity of the injury), the violation would be one of five felonies.
- (3) Section 200j: Senate Bill 443 also would add a new section that prohibited the manufacture, delivery, possession, transportation, placement, use, or release "for an unlawful purpose" of a chemical irritant or chemical irritant device, a smoke device, or an "imitation harmful substance or device" (defined in the bill to mean a substance or device that was designed, intended, or alleged to represent the harmful substances or devices listed in Sections 200i and 200j the bill). If no personal injury or property damage resulted, the violation would be a misdemeanor. Otherwise, a violation would be one of four felonies, again depending on whether the violation resulted in property damage or personal injury.

(4) Section 201: House Bill 4289 would prohibit ordering, sending, taking, transporting, conveying, or carrying "dynamite, nitroglycerine, fulminate in bulk in dry condition or any other explosive substance" that exploded by concussion or friction and that was concealed as freight or baggage on "a passenger boat or vessel, a railroad car or train of cars, a street car, motor bus, stage, or other vehicle used wholly or partly for carrying passengers or articles of commerce by land or water." The bill would make a violation of the prohibition one of five felonies, depending on any resulting property damage or personal injury.

(5) Section 204: House Bill 4289 would prohibit sending or delivering (though not, as currently, "unlawfully and maliciously") any kind of explosive substance "or any other dangerous thing" (instead of, as currently, "any other noxious or dangerous thing") with the intent to "frighten, terrorize, intimidate, threaten, harass, injure, or kill" someone or to damage or destroy someone's property (instead of, as currently, with the intent "to burn, maim, disfigure or disable any person, or do bodily harm to any person"). The bill would make violations one of five felonies, depending on any resulting property damage or personal injury. Currently, Section 204 also makes it a felony to place explosive substances "for the purpose of creating a distinctive odor associated with gas with intent to alarm any person or persons," language which would be dropped in House Bill 4289.

(6) Section 204a: Senate Bill 97 would combine language from the two sections of current law regarding fake bombs, rewriting one section (Section 204a) and repealing the other (Section 205a). It would continue to be a felony to send, transport (current Section 204a), deliver, or place (current Section 205a, though without, as currently, "knowingly" doing so) a fake bomb or fake incendiary device ("a device that is constructed to represent an explosive, incendiary device, or bomb, or that is presented as an explosive, incendiary device, or bomb") with the intent to "terrorize, frighten, intimidate, threaten, harass, or annoy" (but not also, as currently, to "molest") any other person.

(7) Section 207: Currently, there are three sections of the penal code regarding the placement of "gunpowder or any other explosive" with the intent to damage property, each of which is differentiated from the others by the results: endangerment of human life or safety (Section 205), property damage (Section 206), and injury to a person (Section 207). Senate Bill 97 would repeal Sections 205 and 206, and rewrite

Section 207, changing the intent language, eliminating reference to gunpowder, changing the language describing where the explosives would be placed, and making violations one of five possible felonies, depending on whether or not there were property damage or personal injury. The bill would prohibit the placing of an explosive substance in or near any real or personal property (instead of "in, upon, under, against or near to any building, car, vessel or structure") with the intent either "to frighten, terrorize, intimidate, threaten, harass, injure, or kill" someone, or to damage or destroy someone's property, instead of "with intent to destroy, throw down, or injure the whole or any part" of the building, car, vessel or structure.

(8) Section 209: Under Senate Bill 97, it would remain a felony to place an "offensive" or "injurious" (but not also, as currently, "foul") substance or compound (though also not, as currently, "including those sulphur compounds or other substance commonly added to natural gas for the purpose of creating a distinctive odor associated with gas") in or near any real or personal property (instead of "in, upon, under, against or near to any building, underground utility facilities, car, motor vehicle, vessel or structure") with the intent, as currently, (a) to "wrongfully injure or coerce" another person, (b) to "injure" someone's property or business, or (c) to interfere with someone's (rather than, as currently, "to molest another in the") use, management, conduct, or control of his or her business.

(9) Section 209a: House Bill 4289 would add a new "explosives" crime. Anyone 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 guilty of a felony.

(10) Section 210: Senate Bill 97 would prohibit carrying or possessing an explosive or combustible substance or compound or an article containing such substances or compounds (in the language of the bill, "an explosive substance or compound or a substance or compound that when combined with another substance or compound w[ould] become explosive or combustible or an article containing an explosive or combustible substance or a substance or compound that when combined with another substance or compound w[ould] become explosive or combustible") -- instead of, as currently, "a bomb or bombshell or any article containing an explosive or combustible substance or foul, offensive or injurious substance of compound" -- with the intent either to "frighten,

terrorize, intimidate, threaten, harass, injure, or kill" someone or to damage or destroy someone's property, rather than, as currently, with the intent "to use the same unlawfully against the person or property of another". A violation would be one of five felonies, depending on any resulting property damage or personal injury.

(11) Section 211a: House Bill 4289 would prohibit manufacturing, buying, selling, furnishing, or having in one's possession (instead of, as currently, "make, construct or have in possession") any device that was highly incendiary or that was designed to (or that would) explode upon impact or with the application of heat or a flame (as currently) with the intent to "frighten, terrorize, intimidate, threaten, harass, injure, or kill" someone or to damage or destroy someone's property, instead of "with intent to use the device unlawfully against the person or property of another." A violation would be one of five felonies, depending on any resulting property damage or personal injury.

(12) Section 212a: Senate Bill 443 would make it a separate felony to commit a Chapter 33 violation in, or directed at, a "vulnerable target" (a child 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 the death or serious body impairment of another individual.

The bills would not amend Sections 202, 203, 210a, and 212. Thus, it would remain a felony to fail to mark, or to send by common carrier deceptively marked, explosives "or other dangerous articles" (Section 202), while falsely marking, or selling or keeping falsely marked, "dynamite, or other high explosive" would remain a misdemeanor (Section 212). Finally, it would remain a felony to sell, buy, have, or carry valeric acid (or any oil, tincture, elixir or fluid of valerium, or crystals of ammonium valeriate), unless the person doing the selling were a drug manufacturer or wholesale drug dealer selling to licensed physicians, pharmacists, or hospitals or a retail pharmacist selling upon prescription by a licensed physician (Section 210a). (Section 203, which does not refer to criminal actions, makes federal Interstate Commerce Commission regulations binding on all common carriers engaged in intrastate commerce in Michigan that transport explosives by land.)

Punishments. The penalties for the various current felonies and one misdemeanor involving explosives or bombs currently vary, ranging from unspecified penalties (which means that the penalty is that set by the penal code for those crimes whose penalties aren't otherwise specified by law) to life imprisonment without parole for injuring someone by placing explosives with the intent to destroy property. Under the penal code, when not otherwise specified by law, the penalty for a felony is imprisonment for up to 4 years or a fine of up to \$2,000 (MCL 750.503); for a misdemeanor, jail for up to 90 days or a fine of up to \$100 (MCL 750.504).

The bills would implement a generally standard set of increasing penalties for crimes involving the intent (see information on "intent" language, below) to scare or hurt people or damage or destroy property (Sections 200i, 200j, 204, 207, 209, 210, 211a), with the severity of the penalty depending on the amount of harm actually caused by the crime. (The two exceptions to this standard set of graduated penalties would be for two new sections proposed in Senate Bill 443. Section 200i, would have a different maximum fine in the case of serious body impairment, and Section 200j, which would have its own graduated set of penalties, though it also would be based on the actual results of the crime.) More specifically, the lowest penalty would apply to those crimes that resulted neither in property damage nor in personal injury. The second level of penalties would apply to crimes that resulted in property damage. The three remaining levels would apply to crimes that resulted in personal injury, with the penalties increasing as the severity of the resulting personal injury increased from injury other than "serious impairment to a body function," to serious impairment of a body function, to death.

The maximum terms of imprisonment, or fines, or both, would apply under Sections 200i, 204, 207, 209, 210, and 211a as follows:

- (1) If no personal injury or property damage, up to 15 years or \$10,000;
- (2) If property damage resulted, up to 20 years or \$15,000;
- (3) If personal injury, other than "serious impairment to a body function," were inflicted, up to 25 years or \$20,000;

(4) If serious impairment to a body function resulted, up to life imprisonment or \$30,000 (except in the case of the new Section 200i proposed in Senate Bill 443, which would have a maximum fine of \$25,000); and

(5) If death resulted, imprisonment for life without parole and \$40,000.

Section 200j would criminalize certain actions involving chemical irritants or devices, smoke devices, or imitations of the harmful substances or devices listed in Sections 200i and 200j, and would establish a set of crimes -- one misdemeanor and four felonies -- with the following set of penalties that would be based on the same schema as above: If there were no property damage or personal injury, the crime would be a misdemeanor punishable by up to one year or \$1,000. Crimes that resulted in property damage or personal injury would be felonies, punishable by the following maximum terms of imprisonment, or fines, or both:

(1) If property damage resulted, up to 4 years or \$5,000;

(2) If personal injury, other than serious impairment to a body function, were inflicted, up to 10 years or \$10,000;

(3) If serious impairment to a body function resulted, up to 25 years or \$25,000; and

(4) If death resulted, up to life imprisonment or \$40,000.

Other Chapter 33 crimes would not follow the above schema involving sets of crimes and corresponding graduated penalties. Some of the current penalties would be kept, others would be increased, and penalties for the new crimes would be added as follows:

(a) Felonies involving transporting explosives on common carriers (Sections 200 and 201), and sending a fake device (section 204a) currently have unspecified penalties (that is, up to 4 years imprisonment, a fine up to \$2,000, or both). House Bill 4289 would amend Sections 200 and 201, and Senate Bill 97 would amend Section 204a to impose a maximum term of imprisonment of 5 years, a maximum fine of \$3,000, or both for these felonies.

(b) The unspecified penalties for criminal actions involving the marking of explosives shipped by

common carrier (Section 202) and for the misdemeanor involving the marking of "high explosives" (Section 212) would remain unchanged.

(c) The 2- to 5-year felony of unlawfully buying, selling, or having valeric acid or its variations (Section 210a) also would remain unchanged.

(c) Under House Bill 4289, the new felony of having an explosive device in a public place with the intent to terrorize (Section 209a) would carry a maximum term of imprisonment of up to 10 years and a maximum fine of up to \$10,000, or both.

(d) Under Senate Bill 443, the new felony of committing a Chapter 33 violation that involved a "vulnerable target" and that resulted in death or serious injury (Section 212a) would carry a concomitant maximum term of 20 years in prison.

Intent language. Currently, the intent language in Chapter 33 exhibits considerable variability. For example, three sections of this chapter (Sections 204, 204a, and 205a) deal with crimes committed with the specific intention either of scaring people with fake bombs (Sections 204a, 205a) or of hurting them by "unlawfully and maliciously" sending, delivering "any kind of explosive substance or any other noxious or dangerous thing" (Section 204, which lists specific kinds of possible injuries by referring to burning, maiming, disfiguring, disabling, or doing "bodily harm to any person"). Three other sections of the chapter (Sections 205, 206, 207) involve both intent and result: the crimes involve placing "gunpowder or any other explosive substance" with the intent to "destroy, throw down or injure" someone else's property, with the punishment for the crime depending on whether property damage actually results (Section 206), whether the crime endangers human life or safety even though no property is damaged (Section 205), and whether someone is injured even though the intent was to damage property (Section 207). Another set of crimes (Sections 210, 211, 211a) involve the intent to use various explosives, incendiary devices, or "foul, offensive or injurious" substances or compounds "unlawfully" against "the person or property of another." Yet another section (Section 209) involves the crime of placing of "any foul, offensive or injurious substance or compound" with to "wrongfully injure, molest or coerce another," to "injure" their property or business, or to "molest" them "in the use, management, conduct or control of" their business or property. And finally, Section 208 makes it a crime to aid or abet in the placement of either explosives or of

"foul, offensive or injurious" substances or compounds with the intent either (a) to damage someone else's property ("with intent to destroy, throw down or injure the property of another," language also used in Sections 205, 206, and 207) or (b) to "injure" their business or (c) to "molest" them in "the use, management, conduct, or control" of their business or property (Section 208)

The bills would replace and standardize much of the current varied intent language. Intent language for crimes that currently involve the intent to injure people or to damage property generally would be rewritten to refer to actions taken with the intent to scare, hurt, or kill someone or to damage or destroy their property. (The exception is Section 209, which would be rewritten to keep most of the current language referring to "wrongfully" injuring or coercing another person, "injuring" their property or business, or interfering with their use, management, conduct or control of their property or business.) The specific intent language in these sections would refer to "the intent to frighten, terrorize, intimidate, threaten, harass, injure, or kill any person or with the intent to damage or destroy any real or person property without the permission of the property owner or, if the property [wa]s public property, without the permission of the government agency having authority over that property." (Sections 204, 207, 210, 211a) Current language in Sections 204a and 205a regarding the use of fake devices to scare people ("to terrorize, frighten, intimidate, threaten, harass, molest, or annoy any other person") would be used (with the omission of "molest") in the rewritten Section 204a (Senate Bill 97), which would rewrite current provision regarding fake explosive or incendiary devices, and the proposed new Section 209a (House Bill 4289), which would criminalize the possession in a public place of an explosive device or substance.

"Unlawful purpose" language would be used in the proposed new Sections 200i and 200j (Senate Bill 443), sections which would prohibit the manufacture, delivery, possession, transportation, placement, use, or release of (a) harmful biological, chemical, or radioactive substances or devices (Section 200i) or (b) chemical irritants or devices, smoke devices, or imitation harmful substances or devices (as defined in the bill). Senate Bill 443 would define "unlawful purpose" to include, but not be limited to, the intent language included in Sections 204, 207, 210, and 211a as amended. That is, "unlawful purpose" would include, but not be limited to the intent to "frighten, terrorize, intimidate, threaten, harass, injure, or kill any person" or to "damage or destroy any real or personal property" without the owner's permission (or, in the case of public property, with that of the government agency having authority over it).

Repealer. Senate Bill 97 would repeal sections of the penal code regarding the placement of explosives with the intent to destroy property that doesn't result in property damage but that endangers human life or safety (Section 205), the "knowing" delivery or placement of fake bombs with the intent to "terrorize, frighten, intimidate, threaten, harass, molest, or annoy" someone (Section 205a), the placement of explosives with the intent to destroy property that does result in property damage (Section 206), aiding or abetting in placing explosives with the intent to destroy property or injure business (Section 208), the carrying or possession of bombs with the intent to use them unlawfully (Section 210), and the manufacture, buying, selling, furnishing, or possession of explosives ("or any other dangerous explosive material") with the intent to use them unlawfully (Section 211).

In chart form, the current and proposed changes to Chapter 33 of the penal code can be summarized as follows (Note: all of the crimes are felonies except for the one misdemeanor in proposed new Section 200j and the current misdemeanor in Section 212):

Penal Code Section	Current crime	Current penalty	Proposed crime	Proposed penalty
200 (HB 4289)	Transport dynamite, gunpowder or explosive by common carrier	Unspecified (4 years/\$2,000)	Same	5 years/\$3,000
200i [new] (SB 443)			Manufacture, deliver, possess, transport, place, use, or release for an unlawful purpose a harmful biological or chemical substance or device, or radioactive material or device	Standardized graduated penalties (except serious body impairment fine of \$25,000, not \$30,000)
200j [new] (SB 443)			Manufacture, deliver, possess, transport, place, use, or release for an unlawful purpose a chemical irritant or device, a smoke device, or an imitation harmful substance or device <u>(Note:</u> A misdemeanor if no injury or damage, otherwise a felony)	Graduated penalties (but different from the other, standardized graduated penalties)
201 (HB 4289)	Transport dynamite, nitre-glycerine, dry bulk fulminate, concealed concussive explosive by common carrier	Unspecified (4 years/\$2,000)	Same	5 years/\$3,000
202	Marking explosives, other dangerous articles for shipment	Unspecified (4 years/\$2,000)	Unchanged	(Unchanged, i.e. 4 years/\$2,000)
204 (HB 4289)	(1) "Unlawfully and maliciously" send or deliver (or cause to be taken or received) any explosive substance or noxious or dangerous thing with intent to injure; no death results (2) Aiding in the above felony	(1) 5 years (2) 5 years	Send or deliver explosive substances or dangerous things with the intent to terrorize, injure or damage	Standardized graduated penalties
204a (SB 97)	Send or transport fake device with intent to terrorize (PA 202 of 1973)	Unspecified (4 years/\$2,000)	Deliver, send, transport, place fake device with intent to terrorize	5 years/\$3,000
205 (SB 97) [Repeal]	Place gunpowder, explosive substance with intent to destroy; no damage but endangering life or safety	15 years	See 207	

Penal Code Section	Current crime	Current penalty	Proposed crime	Proposed penalty
205a (SB 97) [Repeal]	"Knowingly" deliver or place fake devices with intent to terrorize (PA 202 of 1973)	Unspecified (4 years/\$2,000)	See 204a	
206 (SB 97) [Repeal]	Place gunpowder or explosive with intent to destroy; with resulting property damage	25 years	See 207	
207 (SB 97)	Place gunpowder or explosive with intent to destroy, with injury	Life without parole	Place explosive substance with intent to terrorize, injure or damage	Standardized graduated penalties
208 (SB 97) [Repeal]	Aid/abet placing explosive, foul, offensive, injurious substance or compound with intent to destroy property or injure business	15 years		
209 (SB 97)	(1) Place foul, offensive or injurious substance or compound with intent to wrongfully injure or to hurt property or business (2) Placement of above for the purpose of creating a distinctive odor associated with gas with intent to alarm	(1) 15 years (2) Unspecified (4 years/\$2,000)	Place offensive or injurious substance or compound with intent to wrongfully injure or to hurt property or business	Standardized graduated penalties
209a [new] (HB 4289)			Possess explosive substance or device in public with intent to terrorize	10 years/\$10,000
210 (SB 97)	Carry or possess a bomb or bombshell or article with an explosive or combustible substance, or foul, offensive, injurious substance or compound with intent to use unlawfully	2 to 5 years	Carry or possess explosive or combustible substance or component with intent to terrorize, injure or damage	Standardized graduated penalties
210a	Valerium; unlawful acts (PA 140 of 1941)	2 to 5 years	Unchanged	(Unchanged, i.e. 2 to 5 years)
211 (SB 97) [Repeal]	Manufacture, buy, sell, furnish or have in possession nitre- glycerine, dynamite, giant powder, dangerous explosive material with intent to use unlawfully	2 to 5 years		

Penal Code Section	Current crime	Current penalty	Proposed crime	Proposed penalty
211a (HB 4289)	Make, construct, or have in possession exploding or highly incendiary device with intent to use unlawfully (PA 69 of 1966)	Unspecified (4 years/\$2,000)	Manufacture, buy, sell, furnish, have in possession exploding or highly incendiary device with intent to terrorize, injure or damage	Standardized graduated penalties
212	Marking of dynamite or other "high" explosive (<u>Note</u> : A misdemeanor)	Unspecified (90 days/\$100)	Unchanged	(Unchanged, i.e. 90 days/\$100)
212a [new] (SB 443)			Violation of Chapter 33 involving a "vulnerable target" resulting in serious body impairment or death	Concurrent term of up to 20 years

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the extent that the bill changed decision making with regard to prosecution or sentencing, it would have an indeterminate, though minimal, fiscal impact on the state and local units of government. (9-8-98)

ARGUMENTS:

For:

As the incident with the bomb-carrying family from Battle Creek a couple of years ago graphically illustrated, Michigan's current criminal bomb provisions and penalties are both outdated and inadequate. The bill would provide much-needed updating both of the language and penalties, so that future such incidents, should they occur, could be effectively prosecuted and the violators be appropriately penalized. This would increase the public safety at a time when domestic terrorism, as the tragic bombing of the Oklahoma City federal building and the bombing of the New York City World Trade Center unfortunately illustrate, is on the rise. In addition, the bills would replace the current patchwork of penalties for "bomb" crimes with a rationalized set of penalties, including a five-tier penalty structure that would provide appropriate, escalating penalties for offenses, depending on whether or not property damage occurred or physical injury -- and, if so, how severe -- resulted from the offense. The new penalties

also would address a potential problem in existing law. Under current law, if someone places explosives intending to damage or destroy property and someone is inadvertently injured as a result of this action, the person placing the explosive is guilty of a felony punishable by life imprisonment. And if convicted, the person is not eligible for parole. But current law does not specify how severe the personal injury must be, nor does it exempt the lawful placement of explosives in the course of desired demolition work. Under the bills, however, the most severe penalties would be reserved, as they ought, for death or serious bodily injury, while penalties for crimes resulting in property damage or lesser personal injury would be specified, as would penalties for the crime itself, regardless of whether or not there was any resulting damage or injury. Finally, Senate Bill 443 would criminalize and punish the unfortunately increasing likelihood that harmful biological, chemical, and radioactive substances will be used to terrorize, harm, or kill people. This would address not only the recent incident in Lansing, where a man reportedly was trying to cultivate the deadly anthrax toxin in his basement, but also situations like that faced in Japan, where an extremist sect released a deadly nerve gas in metropolitan subway stations. While nothing like the Japanese incident has occurred yet in Michigan, the use of harmful biological, chemical, or radioactive substances or devices clearly is a possibility that the law ought to address.

Against:

While the bills would simplify and standardize some of the outdated language in this chapter of the penal code, would delete some current terminology, and would add -- and define -- some new terminology (that having to do with harmful biological, chemical, or radioactive substances, materials, or devices, for example), the number and variety of undefined terms used in the chapter still is considerable and the distinctions made by them unclear. For example, the bills would strike "noxious" from the current phrase "noxious or dangerous thing" and the terms "foul" (from the phrase "foul, offensive or injurious substance or compound"), "bombshell," "giant powder," and "dangerous explosive material." But the bills would keep other terms whose meanings are not clear. For example, what is the difference between a "dangerous article" (Section 202) and a "dangerous thing" (Section 204)? Between an "article," a "thing," and a "device"? Between a "substance" and "compound" (as in "explosive substance," "explosive or combustible substance," "offensive or injurious substance or compound")? Between an "incendiary device" and a device that is "highly incendiary"? And what purpose is served by speaking of "explosives," "explosive substances," and "explosive substances that explode by concussion or friction"? How does an explosive substance that explodes by concussion differ from a device "designed to explode or that will explode upon impact"? Furthermore, while the new, standardized "intent" language distinguishes between injuring people and damaging or destroying property, and while Senate Bill 97 eliminates language referring to the intent to "destroy" or "throw down" someone's property, the bill does keep language that applies the term "injury" to both people and to their property or business. Should this be changed? Finally, given that a definition section would be added by Senate Bill 443, should other currently undefined terms -- such as "high explosive," "combustible," or "incendiary" -- be defined? For that matter, shouldn't even the seemingly clearer basic terms -- such as "dynamite," "gunpowder," "nitroglycerine," "fulminate (in bulk in dry condition)", and even "bomb" -- be defined?

In addition to questions about terminology, it also can be asked whether the changes proposed in the bills will continue to cover what Chapter 33 currently covers. In particular, would repeal of the section covering the manufacturing, buying, selling, furnishing, or possession of "dangerous explosive *materials*" (Section 211) be adequately covered by the newly rewritten Section 211a, which continues to apply to exploding or highly incendiary *devices*? Would the proposed

changes also cover all of the situations it should? For example, the placement of "explosive substances" (with the intent to terrorize or injure people, or damage property) would be prohibited in one section, while the placement of "offensive or injurious substances or compounds" (with the intent to "wrongfully injure or coerce" someone, or to injure their property or business, or to interfere with their use, management, conduct and control of their business or property) would be prohibited in another section of the code. But couldn't explosive substances, as well as "offensive or injurious substances or compounds" also be used to "wrongfully injure or coerce someone" or to injure their property or business? Finally, the new Section 209a in House Bill 4289 would prohibit the possession in a public place of "an explosive substance or device" with the intent to "terrorize, frighten, intimidate, threaten, harass, or annoy any other person." But the new provisions do not mention any intent to hurt or kill people or to damage or destroy property, unlike other new intent language in the bills. Couldn't the possession of explosive substances or devices in public be intended to injure or damage as well as to terrorize? And if so, why not include these in the intent language for the possession of explosives in public places?

Finally, the bills would delete existing language in the penal code regarding aiding in sending or delivering explosives with the intent to hurt someone (Section 204), and would repeal the section of the penal code regarding aiding or abetting, or conspiring to aid or abet the placement of explosives with the intent to destroy (Section 208). Currently, under the penal code, these actions are felonies. Would the bills eliminate these felonies?

Response:

Some of the language kept by the bills -- such as "high explosive," "incendiary," and "combustible" -- though not defined in the bill or the penal code nevertheless apparently are well-understood terms in the explosives industry, and therefore do not need defining. And the bills in general would go a long way to simplifying and standardizing the admittedly confusing language in this chapter of the penal code. With regard to the new felony involving the possession of explosives in a public place, even though this proposed section of the penal code does not address the intent to injure people or damage property, amendments to another section of this chapter (Section 210) presumably could cover this contingency, since it would prohibit the carrying or

possession of explosive or combustible substances with the intent to terrorize, injure, or damage, and thus generally covering such possession, whether in a public place or on private property. Finally, the crimes of aiding and abetting (or conspiring to aid or abet in a crime) already are covered elsewhere in current law and so are not needed in this chapter of the penal code.

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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.