

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 443 (as enrolled)
Sponsor: Senator Gary Peters
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 207 of 1998

Date Completed: 8-31-98

CONTENT

The bill amends Chapter 33 of the Michigan Penal Code, which deals with bombs and explosives, to prescribe penalties for additional offenses relating to other types of harmful devices (e.g., chemical, biological, and radioactive substances and devices); and establish a separate penalty if a violation of Chapter 33 involves a "vulnerable target" and results in death or serious injury. The bill will take effect October 1, 1998.

individual, the penalty will be imprisonment for life or any term of years and/or a maximum fine of \$25,000. If the violation results in the death of another individual, the offender must be sentenced to imprisonment for life without eligibility for parole and may be fined up to \$40,000, or both. (The bill defines "serious impairment of a body function" as that term is defined in Section 625 of the Michigan Vehicle Code.)

Harmful Substance or Device

Chemical Irritant/Smoke/Imitation Device

The bill prohibits the manufacture, delivery, possession, transport, placement, use, or release of any of the following for an unlawful purpose: a harmful biological substance or device; a harmful chemical substance or device; or a harmful radioactive material or device. The bill states that "for an unlawful purpose" includes, but is not limited to, having the intent to do any of the following:

The bill prohibits the manufacture, delivery, possession, transport, placement, use, or release of any of the following for an unlawful purpose: a chemical irritant or chemical irritant device; a smoke device; or an imitation harmful substance or device. Except as provided below, a violation will be a misdemeanor, punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both.

- Frighten, terrorize, intimidate, threaten, harass, injure, or kill any person.
- Damage or destroy any real or personal property without the permission of its owner or, if the property is public property, without the permission of the governmental agency having authority over it.

If the violation results in property damage, it will be a felony punishable by up to four years' imprisonment and/or a maximum fine of \$5,000. If the violation results in personal injury to another individual, other than serious impairment of a body function or death, it will be punishable by up to 10 years and/or \$10,000. If the violation results in serious impairment of a body function to another individual, it will be punishable by up to 25 years and/or \$25,000. If the violation results in the death of another individual, it will be punishable by imprisonment for life or any term of years and/or a maximum fine of \$40,000.

Except as follows, a violation will be a felony, punishable by up to 15 years' imprisonment, a maximum fine of \$10,000, or both. If the violation results in property damage, the penalty will be up to 20 years' imprisonment and/or a maximum fine of \$15,000. If the violation results in personal injury to another individual, other than serious impairment of a body function or death, the penalty will be up to 25 years and/or \$20,000. If the violation results in serious impairment of a body function to another

Exceptions

The prohibitions and penalties described above do not apply to a member of the military acting under a lawful order or while engaged in a lawful military activity; a law enforcement officer enforcing the

laws of the United States or of Michigan or while engaged in a lawful law enforcement activity; a person engaged in self-defense or the lawful defense of another person; or, unless acting with an unlawful purpose, a person acting within the scope of his or her employment under a rule or a permit or license of the United States or of Michigan.

Also, unless acting with an unlawful purpose, a person may not be prosecuted under Chapter 33 if he or she, within the scope of his or her employment, violates a rule or a provision of a permit or license issued by the United States or this State to manufacture, deliver, possess, transport, place, classify, label, use, or release a substance or device.

Vulnerable Target

The bill specifies that if a person violates Chapter 33, and if the violation is committed in or directed at a “vulnerable target” and results in the death of another individual or in serious impairment of a body function of another individual, the violation will be an felony punishable by imprisonment for not more than 20 years. The sentence must be served concurrently with a term of imprisonment for the underlying offense. “Vulnerable target” means a child care center or day care center; a health care facility or agency; a building or structure open to the general public; a church, synagogue, mosque, or other place of religious worship; a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade 1 through 12; or an institution of higher education.

Harmful Substance Definitions

The bill defines “harmful biological substance” as a bacteria, virus, or other microorganism or a toxic substance derived from or produced by an organism that can be used to cause death, injury, or disease in humans, animals, or plants. “Harmful chemical substance” means a solid, liquid, or gas that through its chemical or physical properties, alone or in combination with one or more other chemical substances, can be used to cause death, injury, or disease in humans, animals, or plants. “Harmful radioactive material” means material that is radioactive and that can be used to cause death, injury, or disease in humans, animals, or growing plants by its radioactivity. “Chemical irritant” means solid, liquid, or gas that through its chemical or physical properties, alone or in combination with one or more other substances, can be used to

produce an irritant effect in humans, animals, or plants.

A “harmful biological device”, “harmful chemical device”, “harmful radioactive device”, or “chemical irritant device” is a device designed or intended to release a harmful biological substance, harmful chemical substance, harmful radioactive material, or chemical irritant, respectively. “Imitation harmful substance or device” means a substance or device that is designed or intended to represent one or more of the following or that is alleged to be one of the following but that is not any of the following:

- A harmful biological substance or device.
- A harmful chemical substance or device.
- A harmful radioactive material or a radioactive device.

MCL 750.200h et al.

Legislative Analyst: S. Lowe

FISCAL IMPACT

To the extent that the bill enacts new crimes for which there are currently no data available to indicate how many people will be convicted or the minimum sentence that judges will impose, the fiscal impact of the bill is indeterminate. The bill prescribes both misdemeanor and felony punishments and/or fines, thereby having an impact on both State and local government in terms of additional costs of incarceration or additional fine revenue to the extent that people are convicted of these new crimes.

Fiscal Analyst: K. Firestone

S9798\S443ES

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.