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SFA



BILL ANALYSIS

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Senate Bill 443 (as introduced 4-23-97)
Sponsor: Senator Gary Peters
Committee: Judiciary

Date Completed: 5-13-97

CONTENT

The bill would amend provisions of the Michigan Penal Code relating to bombs and explosive devices, to revise various offenses; establish specific penalties for some offenses for which no penalty currently is specified; and change the current penalties for other offenses. The bill would do all of the following:

- Define relevant terms.
- Create various degrees of the felony of terrorism, and specify penalties for those violations.
- Revise or delete various provisions pertaining to the transport of explosive devices.
- Revise or delete various provisions pertaining to the placement, possession, or use of explosive devices.
- Revise provisions dealing with the manufacture, purchase, sale, or furnishing of explosive devices.
- Repeal various sections of the Code that deal with explosive devices.

Definitions

"Explosive substance" would mean a chemical substance that was designed or was capable of exploding by mixing, or by heat, friction, concussion, percussion, or detonation. "Incendiary device" would mean a firebomb, Molotov cocktail, or similar object or a container that consisted of a flammable substance capable of igniting or accelerating burning.

"Terrorist device" would mean one or more of the following that was used in a manner that would be likely to cause alarm, fear, or terror in another human being:

- An explosive substance designed to explode by the activation of a person.
- A flammable substance in a mixture or in a

- container that was designed so that its delivery would ignite or accelerate burning.
- A device or container that was designed to emit a chemical that could cause injury, illness, disease, or death to a human being.
- A device or container that was designed to emit a biological compound, toxin, or living organism that could cause injury, illness, disease, or death to a human being.
- A device or substance that emitted radioactivity and that could cause injury, illness, disease, or death to a human being.

"Fake terrorist device" would mean a device that appeared to be a terrorist device or terrorist mechanism, but that was not a terrorist device, and that was used in a manner that would be likely to cause alarm, fear, or terror in another human being. "Terrorist mechanism" would mean a device or mechanism that was designed to launch, activate, or deliver a terrorist device. Terrorist mechanism would include, but would not be limited to, a grenade launcher, rocket launcher, artillery piece or mortar, or other military weapon capable of launching, activating, or delivering a terrorist device.

Terrorism

The manufacture or possession of a terrorist device, or of an explosive substance intended for use in a terrorist device, would be fourth-degree terrorism. The offense would be a felony, punishable by up to five years' imprisonment and a maximum fine of \$50,000. In a prosecution for fourth-degree terrorism, possession of a terrorist device or an explosive substance intended for use in a terrorist device would be prima facie evidence of the possessor's intent to use the device unlawfully against a person or the property of another.

It would be a felony, punishable by imprisonment for at least 30 years and not more than 50 years plus a maximum fine of \$250,000, to place a

terrorist device or other explosive substance in a location that threatened the safety of any person or property, or to present a terrorist device or other explosive substance to a common carrier or other person for delivery to any person, thereby threatening the safety of that other person or property. (The bill does not specifically identify an offense as third-degree terrorism.)

Activating or detonating a terrorist device in a location that threatened people or property would be second-degree terrorism. The offense would be a felony, punishable by imprisonment for at least 30 years and not more than 50 years, plus a maximum fine of \$250,000.

Placing or detonating a terrorist device in, on, against, or near a church, synagogue, mosque, or other place of religious worship, or a child care center, health care facility of any size, or other building or structure open to the public, would be first-degree terrorism. The offense would be a felony punishable by imprisonment for life without parole plus a maximum fine of \$1 million.

Transportation of Explosives

Common Carrier. The bill would delete a provision prohibiting the transport of dynamite, gunpowder, or other explosive on any vessel, car, or vehicle of any description operated by a common carrier that is carrying passengers for hire. That offense is a felony with no specified penalty. (Under Michigan law, the penalty for a felony with no otherwise specified penalty is up to four years' imprisonment, a maximum fine of \$2,000, or both.)

The bill provides, instead, that a person could not transport, carry, or convey an explosive substance or incendiary device between locations in Michigan on a vessel, railroad car, or vehicle of any description that was operated by a common carrier and that was carrying passengers for hire. The offense would be a felony, punishable by up to five years' imprisonment, a maximum fine of \$2,000, or both. The violation would not apply to the transport, carrying, or conveying of any of the following:

- Small arms ammunition in any quantity.
- Fuses or other signal devices used in promoting safety.
- Properly packed and marked samples for laboratory examination that did not exceed a net weight of one-half pound each, and that did not exceed 20 samples at one time in a single vessel, railroad car, or other vehicle, if

the samples were not carried in the part of the vessel, railroad car, or other vehicle that was intended for the transportation of passengers for hire.

The common carrier transportation prohibitions would not apply to the military forces of the United States or of the State of Michigan in the transportation of military personnel and military munitions.

Ordering, Sending, Delivering. The bill would delete a provision prohibiting the unlawful and malicious sending or delivering of any kind of explosive substance or any other noxious or dangerous thing, with the intent to burn, maim, disfigure, or disable a person or to do bodily harm to any person, when death does not result. The offense is a felony punishable by up to five years' imprisonment.

The bill would retain and revise a provision prohibiting the ordering, sending, taking, transporting, conveying, or carrying of dynamite, nitroglycerine, fulminate in bulk in dry condition, or any other explosive substance that explodes by concussion or friction and is concealed as freight or baggage in any bag, satchel, valise, trunk, box, or in any other manner on a passenger boat, vessel, railroad car, street car, motor bus, stage, or other vehicle used for carrying passengers or articles of commerce. The bill would include in that prohibition a consignee who consigned by his or her procurement and would remove fulminate from the prohibition. Under the bill, the violation would apply to an explosive substance contained in, rather than concealed as freight or baggage in, any bag, satchel, valise, trunk, or box. The bill also would remove "stage" from, and add "aircraft" to, the means of transportation included in the violation. The offense is a felony with no otherwise specified penalty; under the bill, the penalty would be up to five years' imprisonment, a maximum fine of \$10,000, or both.

The bill also would retain and revise another provision of the Penal Code prohibiting the ordering, sending, taking, or carrying of dynamite, nitroglycerine, or any other explosive substance concealed in any bag, satchel, valise, trunk, box, or in any other manner, as freight or baggage, on a passenger boat or vessel, railroad car, street car, motor bus, or other vehicle used for carrying passengers. The bill would add procuring to that list of prohibited activities and would add a "terrorist device" to the items that could not be concealed in any "container", rather than "any bag, satchel,

valise, trunk, box". The bill also would remove "stage" from the means of transportation included in the violation.

The Code specifies that this felony is punishable by imprisonment for life or any term of years, if the substance explodes and destroys human life while in possession of any carrier or on any boat, vessel, railroad car, street car, motor bus, stage, or other vehicle. The bill would delete that penalty provision. The bill provides, instead, that if the dynamite, nitroglycerine, terrorist device, or other explosive substance did not explode, the penalty would be imprisonment for at least five years and not more than 10 years plus a maximum fine of \$25,000; if the dynamite, nitroglycerine, terrorist device, or other explosive substance exploded and caused injury to any person while on a passenger vehicle, the penalty would be imprisonment for at least 20 years and not more than 40 years; if the dynamite, nitroglycerine, terrorist device, or other explosive substance exploded and caused the death of any person while on a passenger vehicle, the penalty would be imprisonment for life without eligibility for parole.

Placement, Possession, or Use of Explosives

The Penal Code prohibits sending or transporting a device constructed to represent, or presented as, an explosive, incendiary device, or bomb with the intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy any other person. The bill would remove "annoy" from this provision and refers to a "fake terrorist device" rather than "a device which is so constructed as to represent, or is presented as, an explosive, incendiary device, or bomb". The offense is a felony, with no specified penalty. The bill specifies that a violation would be punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both.

The bill would delete provisions prohibiting the placement of gunpowder or any other explosive substance in, upon, under, against, or near any building, car, vessel, or structure with intent to destroy, throw down, or injure the building, car, vessel, or structure. Under the current provision, if the placement is done under circumstances that, if the intent is accomplished, would endanger human life or safety, although no damage is done, the offense is a felony, punishable by up to 15 years' imprisonment. If the explosive substance causes the destruction or injury of the property of another, the offense is a felony, punishable by up to 25 years' imprisonment.

Another provision of the Code specifies that the placement of gunpowder or any other explosive substance in, upon, under, against, or near a building or object, with intent to destroy, throw down, or injure any part of the building or object, is a felony, punishable by imprisonment for life or any term of years, if the explosion causes the death of any other person. Under the bill, the provision would cover the use of a terrorist device or other explosive substance, with intent to damage or destroy a building, object, or vehicle, that caused the death of any other person. The felony would be punishable by imprisonment for life without eligibility for parole.

The bill would delete a provision prohibiting the possession or carrying of a bomb, bombshell, or any article containing an explosive or combustible substance or a foul, offensive, or injurious substance or compound, with intent to use the device, substance, or compound unlawfully against the person or property of another. The offense is a felony punishable by imprisonment for at least two years and not more than five years.

Manufacture, Purchase, Sale, or Furnishing of Explosives

The Penal Code prohibits the manufacture, purchase, sale, furnishing, or possession of nitroglycerine, dynamite, giant powder, or any other dangerous explosive with the intent to use it unlawfully against the person or property of another. The felony is punishable by imprisonment for at least two years and not more than five years. The bill would remove "giant powder" from that provision.

The Penal Code requires that every manufacturer of dynamite or other high explosives put a brand or mark on each case, showing the percentage of disruptive force contained in each cartridge in the case, and the name or trade mark, and address of the manufacturer. The bill would delete references to "high" explosives, change "case" to "container" and "cartridge" to "item", and require the brand or mark to include the manufacturer's name and trade mark, as well as the address. The Code prohibits the manufacture, sale, keeping, or offering for sale of any high explosive, that is not marked, branded, or stamped as required in the Code. The Code also prohibits the false branding, marking, or stamping of explosives and the sale, keeping, or offering for sale of explosives that bear a false brand or mark. The false-branding violation is a misdemeanor with no specified penalty. (Under Michigan law, the penalty for a

misdemeanor with no otherwise specified penalty is imprisonment for up to 90 days, a maximum fine of \$100, or both.) Under the bill, a violation of any of the branding or marking provisions would be a misdemeanor, punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both.

The bill would delete a provision making it a misdemeanor to sell or furnish to a minor any bulk gunpowder, dynamite, blasting caps, or nitroglycerine, without first procuring the written consent of the minor's parent or guardian. The bill, instead, would prohibit the sale, furnishing, or delivery of dynamite, nitroglycerine, a terrorist device, or other explosive substance to a person under 21 years of age. The offense would be a felony, punishable by up to five years' imprisonment, a maximum fine of \$50,000, or both.

Repealer

The bill would repeal sections of the Penal Code that prohibit all of the following:

- The knowing delivery or placement of a device that is constructed to represent or is presented as an explosive, incendiary device, or bomb, with the intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy another person. The offense is a felony with no specified penalty. (MCL 750.205a)
- The placing of explosives with intent to destroy property, when the explosion causes injury to another person. The offense is a felony, punishable by imprisonment for life without eligibility for parole. (MCL 750.207)
- Aiding and abetting in the placement of explosives with intent to destroy property. The offense is a felony, punishable by up to 15 years' imprisonment. (MCL 750.208)
- The placement in, upon, under, against, or near any building, underground utility facility, car, motor vehicle, vessel, or structure of any foul, offensive, or injurious substance or compound. If the action is taken with the intent to injure, molest, or coerce another, the offense is a felony punishable by up to 15 years' imprisonment; if the action is taken with the intent to alarm any person, the offense is a felony with no specified penalty. (MCL 750.209)
- Selling, offering for sale, bartering, or otherwise disposing of, or purchasing, receiving, or otherwise acquiring any oil, tincture, elixir, or fluid of valerium, valeric acid, or crystals of ammonium valerate, except under specified circumstances. (MCL

750.210a)

- Making, constructing, or possessing any device that is designed to explode or that will explode upon impact or with the application of heat or a flame, or a device that is highly incendiary, with the intent to use the device unlawfully against the person or property of another. The offense is a felony with no specified penalty. (MCL 750.211a)

MCL 750.200 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill could increase costs for the Department of Corrections.

The new mandatory minimum prison sentences required by the bill could result in increased costs of incarceration for the Department of Corrections. However, according to 1995 circuit court disposition data, there was one conviction of placing explosives with intent to destroy without damage (MCL 750.205) with a sentence to prison; and there were four convictions of placing explosives with intent to destroy with damage (MCL 750.206), one receiving probation and the other three either fines or other forms of local sanction.

The new penalties included in the bill could require at least 30 years in prison for each of these offenses. Assuming five annual commitments, each receiving a 30-year prison sentence (for which currently a sentence of probation, or short-term incarceration would be prescribed), costs after the 30th year for the Department of Corrections would approach \$2.7 million.

Fiscal Analyst: M. Hansen

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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.