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Senate Bill 838 (Substitute S-1 as passed by the Senate)  
Senate Bill 839 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Gary Peters (Senate Bill 838)  
Senator William Van Regenmorter (Senate Bill 839)  
Committee: Judiciary

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### **RATIONALE**

In Michigan and throughout the country, there have been many reports of offenders who committed violent crimes while wearing body armor. In one incident that took place in San Francisco in 1994, a police officer responding to a distress call was killed by a heavily armed suspect who was shielded by a Kelvar vest and bulletproof helmet. A couple years later, in Los Angeles, 11 police officers and six civilians reportedly were injured during a 20-minute gunfight between the police and two would-be bank robbers wearing full protective body armor. Other reports involve gang members, illegal drug manufacturers, terrorists, and members of paramilitary groups who were found wearing or in possession of body armor.

Michigan law presently regulates the sale and possession of weaponry, as well as armor-piercing ammunition. The Michigan Penal Code also makes it a felony for a person to commit or attempt to commit a crime involving a violent act against another person while wearing body armor (MCL 750.227f). Current law does not address access to body armor, however. In addition, there is nothing in Federal law limiting access to body armor, although proposed legislation is pending in the U.S. Senate and House of Representatives. Bulletproof vests and other types of body armor evidently can be purchased at gun shows, by mail order, through gun dealers, and at some discount department stores, and are readily available on the Internet. It has been suggested that Michigan should take steps to ensure that dangerous individuals are not allowed to purchase or possess body armor.

### **CONTENT**

**Senate Bills 838 (S-1) and 839 (S-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to do all of the following:**

- **Prohibit and provide penalties for the purchase, ownership, possession, or use of "body armor", without police authorization, by a person who had been convicted of a "violent felony".**
- **Specify legislative intent with regard to a police chief's or county sheriff's discretion in granting permission for a person to buy, own, possess, or use body armor.**
- **Include the proposed offense in sentencing guidelines.**

The bills would take effect 90 days after the date of their enactment. Senate Bill 839 (S-1) is tie-barred to Senate Bill 838.

Under Senate Bill 838 (S-1), "body armor" would mean that term as defined elsewhere in the Penal Code: "clothing or a device designed or intended to protect an individual's body or a portion of an individual's body from injury caused by a firearm" (MCL 750.227f).

Also under Senate Bill 838 (S-1), "violent felony" would mean that term as defined in the parole provisions of the Department of Corrections law (MCL 791.236): felonious assault, assault with intent to commit murder, assault with intent to do great bodily harm, assault with intent to maim, assault with intent to commit a felony not otherwise specified, unarmed assault with intent to rob and steal, or armed assault with intent to rob and steal (MCL 750.82-750.89); first-degree murder, second-degree murder, or manslaughter (MCL 750.316, 750.317, and 750.321); kidnapping, the taking of a hostage by a prisoner, or kidnapping a person under 14 years old (MCL 750.349-750.350); mayhem (MCL 750.397); first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) or assault with intent to commit CSC (MCL 750.520b-750.520e and 750.520g); armed robbery with aggravated assault, carjacking, or unarmed robbery (MCL 750.529-750.530).

### **Senate Bill 838 (S-1)**

Except as otherwise provided in the bill, a person who had been convicted of a violent felony could not purchase, own, possess, or use body armor. If the person's employment, livelihood, or safety depended on his or her ability to buy, own, possess, or use body armor, the person could petition the chief of police of the local unit of government in which he or she lived or the county sheriff, if he or she did not live in a local unit that had a police department, for written permission to buy, own, possess, or use body armor.

The police chief or sheriff could grant written permission if he or she determined that the petitioner was likely to use body armor in a safe and lawful manner and had reasonable need for the protection provided by body armor. In making this determination, the police chief or sheriff would have to consider all of the following:

- The petitioner's continued employment.
- The interests of justice.
- Other circumstances justifying issuance of written permission to buy, own, possess, or use body armor.

The police chief or sheriff could restrict written permission in any manner he or she determined appropriate. If permission were restricted, the police chief or sheriff would have to state the restrictions in the permission document. The person who received the written permission would have to possess that document when he or she bought, owned, possessed, or used body armor.

A violation of the bill pertaining to the purchase, ownership, possession, or use of body armor would be a felony, punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. Failure to possess written permission granted by a police chief or sheriff would be a misdemeanor, punishable by up to 93 days' imprisonment, a maximum fine of \$100, or both.

The bill states: "It is the intent of the legislature that chiefs of police and county sheriffs exercise broad discretion in determining whether to issue written permission to purchase, own, possess, or use body armor under this section. However, nothing in this section requires a chief of police or county sheriff to issue written permission to any particular petitioner. The issuance of written permission to purchase, own, possess, or use body armor under this section does not relieve any person or entity from criminal liability that might otherwise be imposed."

### **Senate Bill 839 (S-1)**

The purchase, ownership, possession, or use of body armor by a felon would be categorized as a Class F felony against the public safety, with a statutory maximum sentence of four years, as proposed by Senate Bill 838 (S-1).

Proposed MCL 750.227g (S.B. 838)  
MCL 777.16m (S.B. 839)

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The bills would protect both law enforcement officers and civilians by making it a separate criminal offense for violent felons to purchase, own, or use body armor. Specific penalties for this offense are appropriate because assailants shielded by body armor pose an enhanced threat to the public. As reports from around the country have shown, gunmen wearing body armor can hold police officers at bay, while increasing the likelihood that innocent citizens will be injured or killed. Furthermore, it is unconscionable that criminals can obtain and wear body armor without restriction, when many police officers lack comparable protection. According to Congressional testimony, nearly 25% of all local law enforcement officers nationwide are not issued body armor. This legislation would help address the imbalance between criminals and law enforcement by limiting violent felons' access to body armor.

#### **Supporting Argument**

In addition to law enforcement officers, many law-abiding citizens have a legitimate need for body armor while engaged in potentially dangerous jobs. These people include, for example, security guards, private investigators, process servers, bail enforcement agents, and bill collectors. Other people might need body armor for particular hobbies, such as race car driving, target shooting, or off-road motorcycling, that can involve blunt trauma. By applying only to violent felons, the bills recognize that there are innocent uses for body armor, and would not restrict the ability of most individuals to acquire this protection. Even someone who had been convicted of a violent felony could seek police authorization to buy, own, or use body armor, if his or her employment, livelihood, or safety were at stake. Thus, the bills would enhance public protection without overly restricting the public's access to body armor.

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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.

**FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people could be convicted of the felony of purchasing, owning, possessing, or using body armor. Nor are there data available to indicate how many people who were given special permission to use body armor, would not have proof on their person, which would be a misdemeanor. The felony would be a Class F crime, which has a minimum sentence range from 0-3 months to 17-30 months.

Assuming that 10 people a year would be found guilty of this felony and sentenced to prison for a minimum of 30 months, given that the average cost of incarceration is \$22,000 annually, the cost of incarcerating these offenders would be \$550,000 per year. Assuming that 10 people a year were convicted of this offense and each received a sentence within the lower minimum range, costs for incarceration would be incurred by local units of government.

Additionally, local units of government would incur costs or receive fine revenues from the misdemeanor offense, which would have a maximum penalty of 93 days' incarceration and/or a fine of \$100. Costs of incarceration vary among the counties.

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