

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bills 838 and 839 (as enrolled)
House Bill 5311 (as enrolled)
Sponsor: Senator Gary Peters (Senate Bill 838)
Senator William Van Regenmorter (Senate Bill 839)
Representative Larry Julian (House Bill 5311)
Senate Committee: Judiciary
House Committee: Criminal Law and Corrections

PUBLIC ACTS 224 & 225 of 2000
PUBLIC ACT 226 of 2000

Date Completed: 9-5-00

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). That offense is punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. Current law does not address access to body armor, however. In addition, Federal law does not limit access to body armor, although legislation has been proposed in the U.S. Senate and House of Representatives. Thus, people are free to purchase bulletproof vests and other types of body armor at gun shows, by mail order, through gun dealers, and at some discount department stores, as well as on the Internet.

It was suggested, therefore, that Michigan should take steps to ensure that dangerous individuals are not allowed to purchase or possess body armor. It also was suggested that a prison sentence for committing an offense while wearing body armor might be more effective if it is served after the offender has finished serving his or her sentence for the underlying crime.

CONTENT

Senate Bills 838 and 839 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 has 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 new offense in sentencing guidelines.
- Allow a law enforcement agency to issue body armor to a person in custody or a crime witness for his or her protection.

House Bill 5311 amends the Michigan Penal Code to provide that a term of imprisonment imposed for committing or attempting to commit a crime that involves a violent act or a threat of violence while wearing body armor, may be served consecutively to any term of imprisonment imposed for the crime committed or attempted.

All of the bills will take effect on October 1, 2000. Both Senate bills were tie-barred to House Bill 5311. Senate Bill 839 and the House bill were tie-barred to Senate Bill 838.

The Senate bills are described in more detail below.

Senate Bill 838

Under the bill, "body armor" means that term as defined in the Penal Code section that prohibits

wearing body armor while committing a violent crime: “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).

The bill defines “violent felony” by reference to the definition 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); or armed robbery with aggravated assault, carjacking, or unarmed robbery (MCL 750.529-750.530).

Except as otherwise provided in the bill, a person who has been convicted of a violent felony may not purchase, own, possess, or use body armor. If the person’s employment, livelihood, or safety depends on his or her ability to buy, own, possess, or use body armor, the person may petition the chief of police of the local unit of government in which he or she lives, or the county sheriff if the person does not live in a local unit with a police department, for written permission to buy, own, possess, or use body armor.

The police chief or sheriff may grant written permission if he or she determines that the petitioner is likely to use body armor in a safe and lawful manner and has reasonable need for the protection provided by body armor. In making this determination, the police chief or sheriff must 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 may restrict written permission in any manner he or she determines appropriate. If permission is restricted, the police chief or sheriff must state the restrictions in the permission document.

In addition, a law enforcement agency may issue body armor to a person who is in custody or who is

a witness to a crime for his or her own protection, without the filing of a petition as required above. If a law enforcement agency issues body armor under this provision, the agency must document the reasons for doing so and retain a copy of the document as an official record. The agency also must give the person written permission to possess and use body armor.

A person who receives written permission from a police chief or sheriff must have that document in his or her possession when he or she buys, owns, possesses, or uses body armor.

A violation of the bill pertaining to the purchase, ownership, possession, or use of body armor will be a felony, punishable by up to four years’ imprisonment, a maximum fine of \$2,000, or both. Failure to possess written permission as required will 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

The bill categorizes the purchase, ownership, possession, or use of body armor by a felon as a Class F felony against the public safety, with a statutory maximum sentence of four years, as provided by Senate Bill 838.

MCL 750.227g (S.B. 838)
777.16m (S.B. 839)
750.227f (H.B. 5311)

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 Senate bills will 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, armed individuals 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 will 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 that can involve blunt trauma, such as race car driving, target shooting, or off-road motorcycling. By applying only to violent felons, the Senate bills recognize that there are innocent uses for body armor, and will not restrict the ability of most individuals to acquire this protection. Even someone who has been convicted of a violent felony may seek police authorization to buy, own, or use body armor, if his or her employment, livelihood, or safety is at stake. Thus, the bills will enhance public protection without overly restricting the public's access to body armor.

Supporting Argument

People who commit violent crimes while wearing body armor deserve severe penalties. This was recognized in 1990 when the Legislature first criminalized the offense of wearing body armor while committing a violent crime. The maximum prison term of four years, however, is not necessarily an adequate punishment or an effective deterrent when the sentence is served concurrently with the sentence for the underlying crime. For example, if an offender receives a 10-year sentence for robbery, plus a four-year sentence for wearing body armor while committing the robbery, the offender's period of incarceration will be based on the 10-year sentence. Under House Bill 5311, a judge may order the sentence for wearing body armor to be served consecutively to the sentence for the robbery, which means that the time served would be based on both the 10-year sentence and the four-year sentence. This will allow a stiffer penalty and might provide a greater degree of deterrence.

Legislative Analyst: S. Lowe

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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

Senate Bills 838 & 839

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

There are no data available to indicate how many people might be convicted of the felony of purchasing, owning, possessing, or using body armor. Nor are there data available to indicate how many people who are given special permission to use body armor, will not have proof on their person, which will be a misdemeanor. The felony will 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 are 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 will be \$550,000 per year. Assuming that 10 people a year are convicted of this offense and each receives a sentence within the lower minimum range, costs for incarceration will be incurred by local units of government.

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

House Bill 5311

The bill potentially will increase costs to State government.

In 1998, there were two offenders convicted of wearing body armor during a violent crime and both were sentenced to prison. To the extent that a judge sentences an offender to a consecutive sentence for this offense, as the bill allows, the term of incarceration for these offenders will increase.

For example, if one assumes that two offenders are convicted of a violent crime with a minimum sentence of seven years, as well as wearing body armor during that crime with a minimum sentence of two and a half years, that the terms are concurrent, and that the offenders serve only the minimum term, then each offender will serve a total of seven years. Given that the average annual cost of incarceration is \$22,000 per year, the cost of incarceration for the two offenders will be \$308,000. If the terms are served consecutively, however, each offender will serve nine and a half years, and given the average annual costs, the cost of incarceration will be \$418,000.

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