

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 497 (Substitute S-2 as passed by the Senate)
Senate Bill 498 (Substitute S-1 as passed by the Senate)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 7-10-01

RATIONALE

The Michigan Penal Code prohibits a person who is under the influence of alcohol or drugs from possessing or using a firearm. A violation is a misdemeanor regardless of whether it is a possession or use offense, and regardless of whether injury or death results from the offense. The Michigan Vehicle Code, on the other hand, contains felony penalties for causing death or severe injury as the result of drunk driving, and authorizes chemical analysis of blood, breath, or urine to determine a violator's bodily alcohol content. Some people believe that the prohibition against using a firearm while drunk should be made more consistent with the drunk driving laws.

CONTENT

Senate Bill 497 (S-2) would amend the Michigan Penal Code to revise the prohibition against possessing or using a firearm while under the influence of drugs or alcohol, by establishing felony penalties for a violation that caused a "serious impairment of a body function" or death to another individual, and making other changes. The bill also would authorize a peace officer to require an individual to submit to a chemical analysis of his or her breath, blood, or urine, with collection and testing to be done as required for driving violations. Senate Bill 498 (S-1) would add the proposed felony penalties to the sentencing guidelines in the Code of Criminal Procedure. The bill is tie-barred to Senate Bill 497.

Senate Bill 497 (S-2)

Violation and Penalties

Currently, the Penal Code prohibits a person who is under the influence of intoxicating liquor or any exhilarating or stupefying drug from carrying, having in his or her possession or control, or using or discharging a firearm. The violation is a misdemeanor. The bill specifies instead that an individual could not carry, have in possession or under control, use in any manner, or discharge a firearm under any of the following circumstances:

- The individual was under the influence of alcoholic liquor, a controlled substance, or a combination of liquor and a controlled substance.
- The individual had an alcohol content of .08 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Due to the consumption of alcoholic liquor, a controlled substance, or a combination of liquor and a controlled substance, the individual's ability to use a firearm was visibly impaired.

Except as follows, a violation would be a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$500, or both. If a person violated the bill and caused a serious impairment of a body function of another person by the discharge or use of the firearm, the violation would be a felony punishable by up to five years' imprisonment and/or a fine of not less than \$1,000 or more than \$5,000. If a person violated the bill and caused the death of another person by the discharge or use of the firearm, the violation would be a felony punishable by up to 15

years' imprisonment and/or a fine of not less than \$2,500 or more than \$10,000.

"Serious impairment of a body function" would include one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.
- Loss of an eye or ear or use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasted for more than three days.
- Measurable brain damage or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.
- Loss of an organ.

The bill states that it would not prohibit an individual from being charged with, convicted of, or sentenced for any other violation of law arising out of the same transaction as a violation of the bill in lieu of being charged, convicted, or sentenced under the bill.

Chemical Analysis

The bill specifies that a peace officer who had probable cause to believe an individual violated the bill could require that individual to submit to a chemical analysis of his or her breath, blood, or urine. A person who had hemophilia, diabetes, or a condition that required the use of an anticoagulant under the direction of a physician would not be required to submit to a chemical analysis of his or her blood.

Before an individual was required to submit to a chemical analysis, the officer would have to inform him or her of both of the following:

- The individual could refuse to submit to the chemical analysis, but the officer could obtain a court order requiring that he or she submit to chemical analysis.
- If the individual submitted to the chemical analysis, he or she could obtain a chemical analysis from a person of his or her own choosing.

The collection and testing of breath, blood, or urine specimens under the bill would have to be conducted in the same manner that specimens are collected and tested for alcohol- and controlled substance-related driving violations under the Michigan Vehicle Code.

Senate Bill 498 (S-1)

The bill would add the felony penalties proposed by Senate Bill 497 (S-2) to the sentencing guidelines. Using a firearm while under the influence or while impaired, causing a serious impairment of a body function would be a Class E felony against a person, with a statutory maximum sentence of five years' imprisonment. Using a firearm while under the influence or while impaired, causing a death would be a Class C felony against a person, with a statutory maximum sentence of up to 15 years' imprisonment.

MCL 750.222 & 750.237 (S.B. 497)
777.16m (S.B. 498)

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

Like alcohol and motor vehicles, alcohol and firearms can be a dangerous combination. Drinking alcohol, especially in an amount that can raise bodily alcohol content to a level at which driving is proscribed, impairs the senses and slows the reflexes: a result incompatible with the safe and proper use of a firearm. Although Michigan law includes strong penalties for drunk driving, the Michigan Penal Code contains outdated language prohibiting the possession or use of a gun by a person who is under the influence of alcohol or drugs, and provides for insufficient penalties.

A recent case involving a hunting incident illustrates the need for more severe punishment. On November 17, 2000, while hunting in northern Michigan, a man was shot and killed by another hunter who apparently mistook the man for a deer. A blood test given to the shooter more than five hours after the incident revealed a blood alcohol content that exceeded the level that constitutes driving under the influence. The shooter reportedly was sentenced to 30 days

in jail and two years of probation, and his hunting privileges were suspended for three years. He apparently served only five days' jail time and wore a tether under home confinement for 28 days.

By establishing standards similar to those for drunk driving, Senate Bill 497 (S-2) would update the prohibition against possessing or using a firearm while under the influence of alcohol or drugs. These standards would state more explicitly what constitutes a violation. In addition, the bill would authorize a peace officer to require a suspected violator to submit to a blood, breath, or urine test, in order to gauge whether the person met the revised standards. These provisions would help to make the prohibition more enforceable.

While Senate Bill 497 (S-2) would increase the penalty for a basic violation only slightly, it also would establish much more severe penalties for a violation that caused a death or serious impairment of a body function. This would be consistent with revisions made in Michigan's drunk driving laws in recent years and would recognize the magnitude of a drunk shooting violation that killed or seriously injured a person. In addition, if the penalties were increased, perhaps hunters and others who use firearms would be less likely to drink and shoot.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Under the conditions described in the bills, causing a serious impairment of a body function would be a Class E felony with a minimum sentencing range from 0-3 months to 24-38 months, and causing death would be a Class C felony with a minimum sentencing range from 0-11 months to 62-114 months. Since carrying, using, or discharging a firearm under the influence of liquor or drugs is a misdemeanor under current law, there are no statewide data to indicate how many offenders a year are convicted of the crime.

Assuming that 10 offenders a year would be convicted of each of the felonies and that they would receive the longest minimum sentence,

given that the annual cost of incarceration is \$22,000, the cost of incarceration for these crimes would be \$2,790,000. If offenders received the shortest sentences, costs of incarceration would be incurred by local governments or by the State for felony probation at \$4.23 per day.

Fiscal Analyst: K. Firestone

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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.