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**SFA****BILL ANALYSIS**

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Senate Bill 497 (as enrolled)  
Senate Bill 498 (as enrolled)  
Senate Bill 675 (as enrolled)  
Sponsor: Senator William Van Regenmorter  
Senate Committee: Judiciary  
House Committee: Criminal Justice

**PUBLIC ACT 135 of 2001**  
**PUBLIC ACT 166 of 2001**  
**PUBLIC ACT 136 of 2001**

Date Completed: 5-14-02

## **CONTENT**

**Senate Bill 497 amended the Michigan Penal Code do all of the following:**

- **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 causes a "serious impairment of a body function" or death to another individual.**
- **Authorize a peace officer to require an individual suspected of the firearm offense, 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.**
- **Revise the penalties for violations involving a chemical irritant or certain harmful substances or devices.**
- **Prohibit and provide criminal penalties for a false claim that an individual has been exposed to certain harmful substances or devices.**

**Senate Bills 498 and 675 amended the sentencing guidelines provisions of the Code of Criminal Procedure to include in the guidelines felony offenses enacted by Senate Bill 497 and other bills. Senate Bill 675 also revised some of the sentencing guidelines scoring instructions.**

Senate Bill 498 was tie-barred to Senate Bill 497. Senate Bill 675 was tie-barred to Senate Bill 497 and House Bill 4813, which repealed Public Act 214 of 1931 (felonious driving) and re-enacted revised felonious driving provisions within the Michigan Vehicle Code.

## **Senate Bill 497**

### Firearm Use While Under the Influence

Violation & Penalties. Previously, the Penal Code prohibited a person who was 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 was a misdemeanor. The bill provides instead that an individual may not carry, have in his or her possession or under his or her control, use in any manner, or discharge a firearm under any of the following circumstances:

- The individual is under the influence of alcoholic liquor, a controlled substance, or a combination of liquor and a controlled substance.
- The individual has 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 is visibly impaired.

Except as follows, a violation is a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$100 for carrying or possessing a firearm or \$500 for using or discharging a firearm, or both. If a person violates the bill and causes a serious impairment of a body function of another person by the discharge or use of the firearm, the violation is 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 violates the bill and causes the death of another person by the discharge or use of the firearm, the violation is 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" includes 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 lasts 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 does 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 has probable cause to believe an individual violated the bill's firearm provisions may require that individual to submit to a chemical analysis of his or her breath, blood, or urine. A person who has hemophilia, diabetes, or a condition that requires the use of an anticoagulant under the direction of a physician is not required to submit to a chemical analysis of his or her blood.

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

- The individual may refuse to submit to the chemical analysis, but the officer may obtain a court order requiring submission.
- If the individual submits to the chemical analysis, he or she may obtain a chemical

analysis from a person of his or her own choosing.

The bill specifies that the failure of a peace officer to comply with those requirements, however, does not render the results of a chemical analysis inadmissible as evidence in a criminal prosecution for firearm use while under the influence or impaired, in a civil action arising out of that violation, or in any administrative proceeding arising out of the violation.

The collection and testing of breath, blood, or urine specimens under the bill must 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.

#### Chemical Irritant & Harmful Substance or Device

The Penal Code prohibits manufacturing, delivering, possessing, transporting, placing, using, or releasing any of the following for an unlawful purpose:

- A chemical irritant or chemical irritant device.
- A smoke device.
- An imitation harmful substance or device.

Previously, a violation was a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. Under the bill, a violation is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$5,000.

A violation that results in property damage is a felony and previously was punishable by up to four years' imprisonment and/or a maximum fine of \$5,000. Under the bill, that violation is punishable by up to seven years' imprisonment and/or a maximum fine of \$10,000.

A violation that results in personal injury to another individual, other than serious impairment of a body function or death, is a felony and previously was punishable by up to 10 years' imprisonment and/or a maximum fine of \$10,000. The bill increased the maximum fine to \$15,000.

The bill retained the penalties for a violation that results in serious impairment of a body function to another individual (up to 25 years' imprisonment and/or a maximum fine of \$25,000) and for a violation that results in the death of another individual (imprisonment for life or any term of years and/or a maximum fine of \$40,000).

The bill also prohibits a person from committing an act with the intent to cause an individual falsely to believe that he or she had been exposed to a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, or harmful radioactive device. A violation is a felony punishable by up to five years' imprisonment

and/or a maximum fine of \$10,000. The bill requires the court also to impose costs on the person, in order to reimburse any governmental agency for its expenses incurred as a result of the violation, as provided in the Code of Criminal Procedure.

### **Senate Bill 498**

The bill added to the sentencing guidelines the felony penalties in Senate Bill 497 involving firearm use while under the influence or impaired, as shown in Table 1.

### **Senate Bill 675**

The bill included offenses in the sentencing guidelines as shown in Table 2.

Table 1

Violation	Felony Class	Crime Category	Stat. Max. Sentence
Using firearm while under the influence or while impaired, causing serious impairment of a body function	E	Person	5 years
Using firearm while under the influence or while impaired, causing death	C	Person	15 years

Table 2

Violation	Felony Class	Crime Category	Stat. Max. Sentence	Enacting Legislation
Felonious driving	G	Person	2 years	H.B. 4813 <sup>a)</sup>
False pretenses under MI Family Farm Dev. Act involving \$1,000 to \$20,000	E	Property	5 years	S.B. 404
False pretenses under MI Family Farm Dev. Act involving \$20,000 or more	D	Property	10 years	S.B. 404
Irritant or Device	E	Property	7 years	S.B. 497 <sup>b)</sup>
Falsely exposing person to harmful substance or device	E	Person	5 years	S.B. 497
<sup>a)</sup> Senate Bill 675 moved the sentencing guidelines designation for felonious driving to a different section of Chapter 17 of the Code of Criminal Procedure.				
<sup>b)</sup> Senate Bill 675 changed use of a chemical irritant or irritant device causing property damage from a Class F felony to Class E and changed the statutory maximum sentence designation from four years to seven years, consistent with Senate Bill 497.				

The bill also changed some of the sentencing guidelines scoring instructions. The bill requires that five points be scored for offense variable 1 (aggravated use of a weapon) if the offender used a chemical irritant, chemical irritant device, smoke device, or imitation harmful substance or device.

Offense variable 2 is lethal potential of the weapon possessed or, under the bill, used. The bill requires that 15 points be scored for that offense variable if the offender possessed or used a harmful biological substance, harmful biological device, harmful chemical substance, harmful chemical device, harmful radioactive material, or harmful radioactive device.

The Code requires that 15 points be scored for offense variable 19 (threat to the security of a penal institution or court or interference with the administration of justice) if the offender used force or the threat of force against another person or the property of another person to interfere with, or attempt to interfere with, the administration of justice. The bill included in that scoring instruction the use of force or threat of force that results in the interference with the administration of justice or the rendering of emergency services.

MCL 750.200h et al. (S.B. 497)  
777.16m (S.B. 498)  
777.12 et al. (S.B. 675)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

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

Since carrying, using, or discharging a firearm under the influence of liquor or drugs has been a misdemeanor, there are no statewide data to indicate how many offenders a year are convicted of the crime. Under the bills, committing this offense and causing a serious impairment of a body function is a Class E felony with a minimum sentencing range from 0-3 months to 24-38 months, while doing so and causing death is a Class C felony with a minimum sentencing range from 0-11 months to 62-114 months. If one offender is convicted of each of the felonies and receives the longest minimum sentence, given that the

annual cost of incarceration is \$25,000, it will cost the State \$317,000.

There are also no data to indicate how many offenders are convicted for manufacturing or possessing a chemical irritant or harmful substance or device. By increasing the maximum sentence from one year to five years, the bills increase the longest allowable minimum sentence from eight months to 40 months. An offender previously would have served in local facility, and local units would have incurred the cost of incarceration. Under the bills, an offender who receives the longest minimum sentence will serve in a State facility, and the State will incur the cost of \$83,000.

According to the 1999 Department of Corrections Statistical Report, there were no offenders either convicted or serving time for manufacturing or possessing a chemical irritant or harmful substance or device resulting in property damage or personal injury. Under the bills, the longest allowable minimum sentence an offender causing property damage may receive is 38 months rather than 30. If one offender is convicted and receives the longest possible sentence, it will cost the State an additional \$16,700. Also, an offender causing personal injury may now be fined up to \$15,000 rather than \$10,000. Any additional penal fine revenue collected will benefit public libraries.

Additionally, to the extent that they increased the possible sentencing guideline score that an offender can receive, which determines the minimum sentence length, the bills might increase State and local corrections' costs.

Finally, the felonious driving and Michigan Family Farm false pretenses sentencing guideline changes in Senate Bill 675 will have no fiscal impact other than that previously considered with the enacting legislation.

Fiscal Analyst: Bethany Wicksall

#### S0102\497es

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.