

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bills 497 and 498 (as introduced 5-17-01)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 5-22-01

CONTENT

Senate Bills 497 and 498 would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to revise the prohibition against possessing or using a firearm while under the influence of drugs or alcohol, including by establishing felony penalties for a violation that caused a "serious impairment of a body function" or death to another individual, and to add those felony penalties to the sentencing guidelines. Senate Bill 497 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 in the same manner as required for driving violations. Senate Bill 498 is tie-barred to Senate Bill 497.

Senate Bill 497

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 possess a firearm under any of the following circumstances:

- The individual was under the influence of intoxicating liquor, a controlled substance, or a combination of liquor and a controlled substance.
- The individual had an alcohol content of more than .07 gram per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Due to the consumption of intoxicating 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 90 days' imprisonment, a maximum fine of \$100, 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.

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

The bill would add the felony penalties proposed by Senate Bill 497 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)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 497 and 498 would have an indeterminate fiscal impact on State and local government.

The bills would create felony offenses: one for causing a serious impairment of a body function, which would be a Class E felony with a minimum sentencing range from 0-3 months to 24-38 months, and another for causing death, which 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