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Senate Bill 809 (as reported without amendment)  
Sponsor: Senator Valde Garcia  
Committee: Judiciary

Date Completed: 2-25-02

### **RATIONALE**

The Michigan Penal Code exempts various law enforcement, corrections, military, and other authorized personnel from its restrictions regarding the sale, possession, concealment, and transport of certain types of weapons. This exemption is necessary for those people to perform their official duties. Other provisions of the Code, to which the weapons exemption does not apply, prohibit the sale and possession of short-barreled shotguns and rifles; electronic tasers, commonly known as "stun guns"; and mechanically operated knives, which are popularly referred to as "switchblades". Each of these types of weapons, however, apparently could be useful to police officers facing different situations. Some people believe that police and military personnel should be exempt from the Penal Code's weapons restrictions pertaining to short-barreled guns, stun guns, and switchblades in order to allow them to perform their duties more effectively.

In addition, while the Penal Code's weapons exemption applies to members of the U.S. Army, Air Force, Navy, and Marines as well as the National Guard and Armed Forces Reserve, it does not include the U.S. Coast Guard and Coast Guard Reserve. Since the Coast Guard enforces maritime laws and acts as a military force in war time, some people believe that the weapons exemption should also apply to its members.

### **CONTENT**

**The bill would amend the Michigan Penal Code to expand the list of weapons offenses from which certain officials are exempt, and to include among those officials a member of the U.S. Coast Guard or Coast Guard reserve.**

The Code specifies that certain weapons offenses do not apply to any of the following:

- A peace officer of an authorized police agency of the United States, this State, or a political subdivision of this State who is regularly employed and paid by one of those governmental entities.
- A person regularly employed by the Department of Corrections (DOC) who is authorized in writing by the DOC Director to carry a concealed weapon while in the official performance of his or her duties or while going to or returning from those duties.
- An employee of a private vendor operating a youth correctional facility who meets the same criteria established by the DOC Director for DOC employees and who is authorized in writing by the Director to carry a concealed weapon while in the official performance of his or her duties or while going to or returning from those duties.
- A member of the U.S. Army, Air Force, Navy, or Marine Corps, while carrying weapons in the line of or incidental to duty.
- An organization authorized by law to purchase or receive weapons from the U.S. or from the State.
- A member of the National Guard, armed forces reserve, or any other authorized military organization, while on duty or drill, or in going to or returning from a place of assembly or practice, while carrying weapons used for a purpose of the National Guard, armed forces reserve, or other duly authorized military organization.

The bill would add to that list a member of the U.S. Coast Guard, while carrying weapons in the line of or incidental to duty, and a member

of the U.S. Coast Guard reserve while on duty or drill, or in going to or returning from a place of assembly or practice, while carrying weapons used for a purpose of the U.S. Coast Guard reserve.

The weapons offenses from which those listed above are exempt include all of the following:

- Manufacturing, selling, offering for sale, or possessing any of the following: a machine gun or firearm that shoots or is designed to shoot more than one shot without manual reloading, by a single function of the trigger; a muffler or silencer; a bomb or bombshell; a blackjack, slingshot, billy, metallic knuckles, sand club, sand bag, or bludgeon; or a device, weapon, cartridge, container, or contrivance designed to render a person temporarily or permanently disabled by the ejection, release, or emission of a gas or other substance (MCL 750.224).
- Carrying a concealed dagger, dirk, stiletto, double-edged nonfolding stabbing instrument of any length, or any other dangerous weapon, except a hunting knife, or carrying a concealed pistol without a license to carry it (MCL 750.227).
- Transporting or possessing a loaded firearm, other than a pistol, in or upon a boat, motor vehicle, aircraft or any other mechanically propelled vehicle (MCL 750.227c).
- Transporting or possessing a firearm, other than a pistol, in or upon a motor vehicle or any self-propelled vehicle designed for land travel unless the firearm is unloaded and is taken down, enclosed in a case, carried in the trunk, or inaccessible from the vehicle's interior (MCL 750.227d).

The bill would add all of the following violations to the offenses from which the people listed above are exempt:

- Selling, offering for sale, or possessing a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed and that is designed to incapacitate temporarily, injure, or kill (MCL 224a).
- Manufacturing, selling, offering for sale, or possessing a short-barreled shotgun or a short-barreled rifle (MCL 224b).
- Selling, offering for sale, or possessing any knife having the appearance of a pocket

knife, whose blade can be opened by the flick of a button, pressure on a handle, or other mechanical contrivance (MCL 226a).

MCL 750.231

## **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**

Short-barreled shotguns or rifles may be more useful than handguns and more easily used than long-barreled guns in certain law enforcement situations. When police make a planned raid on a residence or other building, pursuant to a court-issued warrant, it may be necessary for them to use more firepower than they commonly carry while patrolling the streets. Shotguns and rifles typically may be used by some of the officers involved in these efforts. Since officers must quickly enter through tight spaces, such as doorways and narrow hallways, short-barreled shotguns or rifles could be more easily used than conventional long-barreled guns. Indeed, according to testimony before the Senate Judiciary Committee in 1999, law enforcement weapons suppliers offer short-barreled guns for sale to police departments and tout their usefulness for just that type of police activity. At least one Michigan police department has purchased these weapons, only to be informed by the Attorney General that peace officers are not permitted to use short-barreled shotguns or rifles in this State. Other Michigan law enforcement agencies may be using these weapons without being aware that their use is prohibited. The bill would rectify these situations and provide police with another option when undertaking dangerous law enforcement activities.

Also, there is another practical reason to allow police to use short-barreled shotguns and rifles. Police departments apparently are often using smaller models of vehicles as patrol cars. With less interior room, it is more difficult to stow a long-barreled shotgun or rifle adequately and safely in the vehicle. The bill would allow those long-barreled weapons to be replaced with shorter guns.

### **Supporting Argument**

The ability to use tasers, or weapons that

transmit an electronic charge, would increase a peace officer's options when confronted with a situation requiring less-than-lethal force. Temporarily disabling a belligerent suspect or prisoner with a taser would be preferable, in many circumstances, to an officer's having to draw a handgun to control a situation. Allowing an officer to carry and use such a weapon simply would give him or her more tools with which to perform police duties.

Also, devices that use electronic transmissions could help police and corrections officers control situations in which a prisoner may have to be restrained. In a California case, a known violent offender was fitted with a belt that could receive an electronic transmission and issue an electric jolt to the person wearing it. That offender reportedly lunged at a judge in open court, but was immediately disabled when the taser belt was activated. Michigan law should make this type of technology available to police officers.

#### **Supporting Argument**

Mechanically operated knives, which can be conveniently carried and opened, could be useful to police officers responding to emergency situations. Testimony before the Senate Judiciary Committee by the Brighton police chief in 1999 detailed an incident in another state in which an officer trying to free a person trapped in a car in a raging flood was able to get the person out because he used a switchblade-type knife. The officer had to use one hand to hold on to the vehicle so that he would not be carried away by the flood waters; he was then able to use his other hand to retrieve and open a knife in order to cut the seat belt strap and free the car's occupant from the flooded vehicle. Allowing police officers to use these weapons would better equip them for dealing with accident scenes in which a person was trapped by a seat belt, and other situations in which an officer had to wield a knife one-handed.

#### **Supporting Argument**

The U.S. Coast Guard and Coast Guard Reserve perform quasi-police and quasi-military functions. Their members should be included in the Penal Code's weapons exemption, along with police and military forces.

#### **Opposing Argument**

One of the current exemptions from the

weapons offenses is for DOC employees authorized by the Department Director to carry a concealed weapon. Expanding those exemptions to allow DOC employees to carry stun guns would be misguided. According to a recent report of the Senate Fiscal Agency (SFA), *2000-01 Status of Lawsuits Against the State of Michigan*, there were far more suits against the DOC than against any other Department of state government. Arming DOC staff with stun guns could expose the State to even greater liability, if those weapons were misused.

**Response:** Although the DOC was the subject of the most lawsuits and had the highest amount of payments as a result of those cases, most were for claims relating to employment issues. Only five of the 43 cases against the DOC cited in the recent SFA report were for personal injury claims. Also, according to the Department, the authorization for DOC employees to be armed is used for a limited number of employees, such as those who transport prisoners between facilities or to and from court appearances; absconder recovery units, who track parole violators and escapees from community residential placement facilities and have arrest powers; prison employees who work on security perimeter chase squads or emergency response teams; and some probation and parole officers who carry their own weapons and must use a Department-issued concealed weapon permit to be authorized to carry those weapons while performing their official duties. No DOC employee working inside prison walls is allowed to carry a weapon of any kind and the Department has no plans to use stun guns, short-barreled shotguns, or switchblade knives in any capacity. A DOC spokesperson suggested that the only change in policy that might result from the bill would be limited use of an electronic restrictor belt that could be used during the transport of some prisoners in high-risk cases.

#### **Opposing Argument**

Law enforcement officers should not be given the authority to use more firepower on the streets. Police officers must operate in the community and allowing them greater use of lethal weapons like short-barreled shotguns could endanger innocent citizens.

**Response:** Police already are authorized to use long-barreled weapons; the bill merely would accommodate them in situations in

which the use of short-barreled shotguns might be more appropriate. In addition, although the bill would expand the weapons exemption provisions, law enforcement officers still would be subject to existing restrictions regarding the use of deadly force.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bethany Wicksall

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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.