

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 809 (as enrolled)
Sponsor: Senator Valde Garcia
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 536 of 2002

Date Completed: 1-30-03

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 previously did 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 may be useful to police officers facing different situations. It was suggested that police and military personnel 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 applied to members of the U.S. Army, Air Force, Navy, and Marines as well as the National Guard and Armed Forces Reserve, it did 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, it was suggested that the weapons exemption also apply to Coast Guard personnel.

CONTENT

The bill amended 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 added 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 added 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).

With respect to the possession of a taser, the bill's exemption does not apply to a peace officer, authorized DOC employee, or authorized youth correctional facility employee unless he or she has been trained on the use, effects, and risks of using a taser.

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. Typically, some of the officers involved in these efforts might use shotguns and rifles. Since officers must quickly enter through tight spaces, such as doorways and narrow hallways, they might find it easier and safer to use short-barreled shotguns or rifles 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 purchased these weapons, only to be informed by the Attorney General that peace officers were not permitted to use short-barreled shotguns or rifles in this State. Other Michigan law enforcement agencies may have been using these weapons without being aware that their use was prohibited. By authorizing the use of these weapons, the bill rectifies this situation and gives police 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 will 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, will 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 is preferable, in many circumstances, to drawing a handgun to control a situation. Allowing an officer to carry and use such a weapon simply gives him or her more tools with which to perform police duties.

Also, devices that use electronic transmissions help police and corrections officers control situations in which a prisoner may have to be restrained. In a California case, for example, 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.

Supporting Argument

Mechanically operated knives, which can be conveniently carried and opened, may 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 will better equip them for dealing with accident scenes in which a person is trapped by a seat belt, and other situations in which an officer must 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 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 is misguided. According to a 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 may expose the State to even greater liability, if those weapons are 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 2000-01 SFA report were for personal injury claims. Also, according to the Department, the DOC authorizes only a limited number of employees to be armed; they include employees 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 is the 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 have 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

may endanger innocent citizens.

Response: Police already were authorized to use long-barreled weapons; the bill merely accommodates them in situations in which the use of short-barreled shotguns might be more appropriate. In addition, although the bill expanded the weapons exemption provisions, law enforcement officers still are subject to existing restrictions regarding the use of deadly force.

Opposing Argument

Expanding the types of weapons that police are allowed to use might have dire consequences. Reportedly, in several incidents around the country, police officers have used stun guns to torture suspects. Also, as reported in the *Detroit Free Press*, on January 5, 2003, a Detroit police officer severed a woman's finger while he used a knife to cut off the sleeve of her coat in an attempt to handcuff her. Any exemption for police to possess and use stun guns or switchblades should be accompanied by training requirements, strict limits on how the weapons may be used, and administrative and criminal penalties for their misuse.

Response: The bill exempts police and corrections officers from the stun gun prohibition only if they have been trained on the use, effects, and risks of using the weapons. In addition, law enforcement agencies have systems in place to review officer's use of weaponry and to punish them for improper use. Those policies presumably will apply to a police officers' use of tasers and knives, just as they apply to the use of weapons such as pepper spray, night sticks, and firearms.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will 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.