

REPRINT

SUBSTITUTE FOR

SENATE BILL NO. 497

(As passed the Senate May 31, 2001)

(As amended by the House October 18, 2001)

(1 of 2)

[A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending sections 200h, 200j, 222, and 237 (MCL 750.200h,  
750.200j, 750.222, and 750.237), sections 200h and 200j as added by  
1998 PA 207 and section 222 as amended by 1992 PA 217, and by adding  
section 200l.]

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

[Sec. 200h. As used in this section and sections 200i to ~~200k~~  
200l:

(a) "Chemical irritant" means solid, liquid, or gas that  
through its chemical or physical properties, alone or in combination  
with 1 or more other substances, can be used to produce an irritant  
effect in humans, animals, or plants.

(b) "Chemical irritant device" means a device designed or  
intended to release a chemical irritant.

(c) "Deliver" means the actual or constructive transfer of a  
substance or device from 1 person to another regardless of any  
agency relationship.

(d) "For an unlawful purpose" includes, but is not limited to,  
having the intent to do any of the following:

(i) Frighten, terrorize, intimidate, threaten, harass, injure,  
or kill any person.

(ii) Damage or destroy any real or personal property without the  
permission of the property owner or, if the property is public  
property, without the permission of the governmental agency having  
authority over the property.

(e) "Harmful biological device" means a device designed or  
intended to release a harmful biological substance.

(f) "Harmful biological substance" means a bacteria, virus, or  
other microorganism or a toxic substance derived from or produced by  
an organism that can be used to cause death, injury, or disease in  
humans, animals, or plants.

(g) "Harmful chemical device" means a device that is designed  
or intended to release a harmful chemical substance.

(h) "Harmful chemical substance" means a solid, liquid, or gas  
that through its chemical or physical properties, alone or in  
combination with 1 or more other chemical substances, can be used to  
cause death, injury, or disease in humans, animals, or plants.

(i) "Harmful radioactive material" means material that is  
radioactive and that can be used to cause death, injury, or disease  
in humans, animals, or growing plants by its radioactivity.

(j) "Harmful radioactive device" means a device that is  
designed or intended to release a harmful radioactive material.

(k) "Imitation harmful substance or device" means a substance  
or device that is designed or intended to represent 1 or more of the  
following or that is alleged to be 1 of the following but that is  
not any of the following:

(i) A harmful biological device.

(ii) A harmful biological substance.

(iii) A harmful chemical device.

(iv) A harmful chemical substance.

Sub. SB 497 (S-2) as amended October 18, 2001 1 (2 of 2)

(v) A harmful radioactive material.

(vi) A radioactive device.

(l) "Serious impairment of a body function" means that term as defined in section 58C OR 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.625.

Sec. 200j. (1) A person shall not manufacture, deliver, possess, transport, place, use, or release for an unlawful purpose any of the following:

(a) A chemical irritant or a chemical irritant device.

(b) A smoke device.

(c) An imitation harmful substance or device.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) Except as provided in subdivisions (b) to (e), the person is guilty of a ~~misdemeanor~~ FELONY punishable by imprisonment for not more than ~~1 year~~ 5 YEARS or a fine of not more than ~~\$1,000.00~~ \$5,000.00, or both.

(b) If the violation results in property damage, the person is guilty of a felony punishable by imprisonment for not more than ~~4~~ 7 years or a fine of not more than ~~\$5,000.00~~ \$10,000.00, or both.

(c) If the violation results in personal injury to another individual other than serious impairment of a body function or death, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than ~~\$10,000.00~~ \$15,000.00, or both.

(d) If the violation results in serious impairment of a body function to another individual, the person is guilty of a felony punishable by imprisonment for not more than 25 years or a fine of not more than \$25,000.00, or both.

(e) If the violation results in the death of another individual, the person is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than \$40,000.00, or both.

SEC. 200l. (1) A PERSON SHALL NOT COMMIT AN ACT WITH THE INTENT TO CAUSE AN INDIVIDUAL TO FALSELY BELIEVE THAT THE INDIVIDUAL HAS BEEN EXPOSED TO A HARMFUL BIOLOGICAL SUBSTANCE, HARMFUL BIOLOGICAL DEVICE, HARMFUL CHEMICAL SUBSTANCE, HARMFUL CHEMICAL DEVICE, HARMFUL RADIOACTIVE MATERIAL, OR HARMFUL RADIOACTIVE DEVICE.

(2) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN \$10,000.00, OR BOTH.

(3) THE COURT ALSO SHALL IMPOSE COSTS ON A PERSON WHO VIOLATES SUBSECTION (1) TO REIMBURSE ANY GOVERNMENTAL AGENCY FOR ITS EXPENSES INCURRED AS A RESULT OF THE VIOLATION, IN THE MANNER PROVIDED IN SECTION 1F OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.1F.]

1 Sec. 222. As used in this chapter:

2 (A) "ALCOHOLIC LIQUOR" MEANS THAT TERM AS DEFINED IN SECTION  
3 105 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL  
4 436.1105.

5 (B) ~~(a)~~ "Barrel length" means the internal length of a  
6 firearm as measured from the face of the closed breech of the  
7 firearm when it is unloaded, to the forward face of the end of  
8 the barrel.

9 (C) "CONTROLLED SUBSTANCE" MEANS A CONTROLLED SUBSTANCE OR  
10 CONTROLLED SUBSTANCE ANALOGUE AS THOSE TERMS ARE DEFINED IN



1 SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368,

2 MCL 333.7104.

3       (D) ~~-(b)-~~ "Firearm" means a weapon from which a dangerous  
4 projectile may be propelled by an explosive, or by gas or air.  
5 Firearm does not include a smooth bore rifle or handgun designed  
6 and manufactured exclusively for propelling by a spring, or by  
7 gas or air, BB's not exceeding .177 caliber.

8       (E) ~~-(c)-~~ "Pistol" means a loaded or unloaded firearm that  
9 is 30 inches or less in length, or a loaded or unloaded firearm  
10 that by its construction and appearance conceals ~~-it-~~ ITSELF as a  
11 firearm.

12       (F) ~~-(d)-~~ "Purchaser" means a person who receives a pistol  
13 from another person by purchase, gift, or loan.

14       (G) ~~-(e)-~~ "Seller" means a person who sells, furnishes,  
15 loans, or gives a pistol to another person.

16       (H) ~~-(f)-~~ "Shotgun" means a firearm designed or redesigned,  
17 made or remade, and intended to be fired from the shoulder and  
18 designed or redesigned and made or remade to use the energy of  
19 the explosive in a fixed shotgun shell to fire through a smooth  
20 bore either a number of ball shot or a single projectile for each  
21 single function of the trigger.

22       (I) ~~-(g)-~~ "Short-barreled shotgun" means a shotgun having 1  
23 or more barrels less than 18 inches in length or a weapon made  
24 from a shotgun, whether by alteration, modification, or other-  
25 wise, if the weapon as modified has an overall length of less  
26 than 26 inches.

1       (J) ~~-(h)-~~ "Rifle" means a firearm designed or redesigned,  
2 made or remade, and intended to be fired from the shoulder and  
3 designed or redesigned and made or remade to use the energy of  
4 the explosive in a fixed metallic cartridge to fire only a single  
5 projectile through a rifled bore for each single pull of the  
6 trigger.

7       (K) ~~-(i)-~~ "Short-barreled rifle" means a rifle having 1 or  
8 more barrels less than 16 inches in length or a weapon made from  
9 a rifle, whether by alteration, modification, or otherwise, if  
10 the weapon as modified has an overall length of less than 26  
11 inches.

12       Sec. 237. (1) ~~Possession or use of fire-arm by person~~  
13 ~~under influence of liquor or drug--Any person under the influence~~  
14 ~~of intoxicating liquor or any exhilarating or stupefying drug who~~  
15 ~~shall~~ AN INDIVIDUAL SHALL NOT carry, have in possession or under  
16 control, or use in any manner or discharge ~~any fire-arm within~~  
17 ~~this state, shall be guilty of a misdemeanor.~~ A FIREARM UNDER  
18 ANY OF THE FOLLOWING CIRCUMSTANCES:

19       (A) THE INDIVIDUAL IS UNDER THE INFLUENCE OF ALCOHOLIC  
20 LIQUOR, A CONTROLLED SUBSTANCE, OR A COMBINATION OF ALCOHOLIC  
21 LIQUOR AND A CONTROLLED SUBSTANCE.

22       (B) THE INDIVIDUAL HAS AN ALCOHOL CONTENT OF 0.08 OR MORE  
23 GRAMS PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR  
24 PER 67 MILLILITERS OF URINE.

25       (C) BECAUSE OF THE CONSUMPTION OF ALCOHOLIC LIQUOR, A CON-  
26 TROLLED SUBSTANCE, OR A COMBINATION OF ALCOHOLIC LIQUOR AND A

**SB497, As Passed House, October 18, 2001**

Sub. SB 497 (S-2) as amended October 18, 2001

4

1 CONTROLLED SUBSTANCE, THE INDIVIDUAL'S ABILITY TO USE A FIREARM  
2 IS VISIBLY IMPAIRED.

3 (2) EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (4), AN INDI-  
4 VIDUAL WHO VIOLATES SUBSECTION (1) IS GUILTY OF A MISDEMEANOR  
5 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF  
6 NOT MORE THAN [\$100.00 FOR CARRYING OR POSSESSING A FIREARM, OR  
BOTH, AND NOT MORE THAN \$500.00 FOR USING OR DISCHARGING A FIREARM,  
OR BOTH.]

7 (3) AN INDIVIDUAL WHO VIOLATES SUBSECTION (1) AND CAUSES A  
8 SERIOUS IMPAIRMENT OF A BODY FUNCTION OF ANOTHER INDIVIDUAL BY  
9 THE DISCHARGE OR USE IN ANY MANNER OF THE FIREARM IS GUILTY OF A  
10 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A  
11 FINE OF NOT LESS THAN \$1,000.00 OR MORE THAN \$5,000.00, OR BOTH.  
12 AS USED IN THIS SUBSECTION, "SERIOUS IMPAIRMENT OF A BODY  
13 FUNCTION" INCLUDES, BUT IS NOT LIMITED TO, 1 OR MORE OF THE  
14 FOLLOWING:

15 (A) LOSS OF A LIMB OR USE OF A LIMB.

16 (B) LOSS OF A HAND, FOOT, FINGER, OR THUMB OR USE OF A HAND,  
17 FOOT, FINGER, OR THUMB.

18 (C) LOSS OF AN EYE OR EAR OR OF USE OF AN EYE OR EAR.

19 (D) LOSS OR SUBSTANTIAL IMPAIRMENT OF A BODILY FUNCTION.

20 (E) SERIOUS VISIBLE DISFIGUREMENT.

21 (F) A COMATOSE STATE THAT LASTS FOR MORE THAN 3 DAYS.

22 (G) MEASURABLE BRAIN DAMAGE OR MENTAL IMPAIRMENT.

23 (H) A SKULL FRACTURE OR OTHER SERIOUS BONE FRACTURE.

24 (I) SUBDURAL HEMORRHAGE OR SUBDURAL HEMATOMA.

25 (J) LOSS OF AN ORGAN.

26 (4) AN INDIVIDUAL WHO VIOLATES SUBSECTION (1) AND CAUSES THE  
27 DEATH OF ANOTHER INDIVIDUAL BY THE DISCHARGE OR USE IN ANY MANNER

Sub. SB 497 (S-2) as amended October 18, 2001

5

1 OF A FIREARM IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR  
2 NOT MORE THAN 15 YEARS OR A FINE OF NOT LESS THAN \$2,500.00 OR  
3 MORE THAN \$10,000.00, OR BOTH.

4 (5) A PEACE OFFICER WHO HAS PROBABLE CAUSE TO BELIEVE AN  
5 INDIVIDUAL VIOLATED SUBSECTION (1) MAY REQUIRE THE INDIVIDUAL TO  
6 SUBMIT TO A CHEMICAL ANALYSIS OF HIS OR HER BREATH, BLOOD, OR  
7 URINE. HOWEVER, AN INDIVIDUAL WHO IS AFFLICTED WITH HEMOPHILIA,  
8 DIABETES, OR A CONDITION REQUIRING THE USE OF AN ANTICOAGULANT  
9 UNDER THE DIRECTION OF A PHYSICIAN IS NOT REQUIRED TO SUBMIT TO A  
10 CHEMICAL ANALYSIS OF HIS OR HER BLOOD.

11 (6) BEFORE AN INDIVIDUAL IS REQUIRED TO SUBMIT TO A CHEMICAL  
12 ANALYSIS UNDER SUBSECTION (5), THE PEACE OFFICER SHALL INFORM THE  
13 INDIVIDUAL OF ALL OF THE FOLLOWING:

14 (A) THE INDIVIDUAL MAY REFUSE TO SUBMIT TO THE CHEMICAL  
15 ANALYSIS, BUT IF HE OR SHE REFUSES, THE OFFICER MAY OBTAIN A  
16 COURT ORDER REQUIRING THE INDIVIDUAL TO SUBMIT TO A CHEMICAL  
17 ANALYSIS.

18 (B) IF THE INDIVIDUAL SUBMITS TO THE CHEMICAL ANALYSIS, HE  
19 OR SHE MAY OBTAIN A CHEMICAL ANALYSIS FROM A PERSON OF HIS OR HER  
20 OWN CHOOSING.

[ (7) THE FAILURE OF A PEACE OFFICER TO COMPLY WITH THE  
REQUIREMENTS OF SUBSECTION (6) DOES NOT RENDER THE RESULTS OF A  
CHEMICAL ANALYSIS INADMISSIBLE AS EVIDENCE IN A CRIMINAL PROSECUTION  
FOR VIOLATING THIS SECTION, IN A CIVIL ACTION ARISING OUT OF A  
VIOLATION OF THIS SECTION, OR IN ANY ADMINISTRATIVE PROCEEDING  
ARISING OUT OF A VIOLATION OF THIS SECTION. ]

21 [ (8) ] THE COLLECTION AND TESTING OF BREATH, BLOOD, OR URINE  
22 SPECIMENS UNDER THIS SECTION SHALL BE CONDUCTED IN THE SAME  
23 MANNER THAT BREATH, BLOOD, OR URINE SPECIMENS ARE COLLECTED AND  
24 TESTED FOR ALCOHOL- AND CONTROLLED-SUBSTANCE-RELATED DRIVING VIO-  
25 LATIONS UNDER THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1  
26 TO 257.923.

**SB497, As Passed House, October 18, 2001**

Sub. SB 497 (S-2) as amended October 18, 2001 6

1        [(9)] THIS SECTION DOES NOT PROHIBIT THE INDIVIDUAL FROM BEING  
2 CHARGED WITH, CONVICTED OF, OR SENTENCED FOR ANY OTHER VIOLATION  
3 OF LAW ARISING OUT OF THE SAME TRANSACTION AS THE VIOLATION OF  
4 THIS SECTION IN LIEU OF BEING CHARGED WITH, CONVICTED OF, OR SEN-  
5 TENCED FOR THE VIOLATION OF THIS SECTION.

      [Enacting section 1. Sections 222 and 237 of the Michigan  
penal code, 1931 PA 328, as amended by this amendatory act, take  
effect February 1, 2002.]