

EXPAND ALLOWABLE USE OF PEPPER SPRAY

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House Bill 4861 (Substitute H-2)

Sponsor: Rep. Richard Ball

Committee: Judiciary

Complete to 6-20-06

A SUMMARY OF HOUSE BILL 4861 AS REPORTED FROM COMMITTEE 6-14-05

The Michigan Penal Code authorizes the use of self-defense sprays containing oleoresin capsicum (pepper spray) by law enforcement officers in the performance of their duties and by members of the public in the protection of a person or property under circumstances which would justify using physical force. House Bill 4861 would make the following revisions to these provisions:

- Extend the provisions that currently apply to the use of self-defense *spray* devices to self-defense *foam* devices.
- Revise the definition of a self-defense spray or foam device to include a device capable of releasing a solution containing 10 percent, instead of 2 percent, oleoresin capsicum.
- Restrict the use of a self-defense spray or foam device by the public in protecting persons or property to devices containing not more than 2 percent oleoresin capsicum.
- Allow the reasonable use of a self-device spray or foam device containing not more than 10 percent oleoresin capsicum by a person in the employ of a county sheriff or chief of police and who had written authorization from his or her employer to carry and use, while in the performance of his or her duties, a self-defense spray or foam device if he or she had been trained in the use, effects, and risks of the device.
- Include a reference to Section 224d in a provision that allows, with some restrictions, peace officers and certain authorized employees of the DOC, among others, to use weapons and devices (i.e., stun guns and Tazers) that are generally prohibited. A reference to Section 224 is already included in the provision.
- Specify that the bill would be effective 90 days after enactment.

MCL 750.224, 750.244d, and 750.231)

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on state and local units of government.

BACKGROUND INFORMATION:

Pepper spray is often used as a non-lethal tool for law enforcement officers, correction officers, and jail personnel when attempting to subdue a violent or uncooperative suspect or inmate. However, it is difficult to confine pepper spray only to the intended target. Pepper spray disperses over a wide area and often is spread further by wind or a jail or prison ventilation system, thus affecting many more than intended. The substance in pepper spray, oleoresin capsicum, is now manufactured in a foam product, albeit at a higher concentration than utilized in the spray form. Pepper foam has an advantage over spray in closed or crowded situations in that it can be directed just to the intended target. However, provisions in the penal code would need to be amended to allow the use of oleoresin capsicum in foam devices and to allow the higher concentration found in pepper foam devices.

POSITIONS:

The Department of State Police indicated support for the bill. (6-14-06)

A representative of the Shiawassee County Sheriff's Office testified in support. (6-14-06)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Jan Wisniewski

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.