

# Legislative Analysis



## USE OF WEAPON WITHOUT MALICE: EXEMPT PEACE OFFICER FROM PROSECUTION

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House Bill 5270 as enrolled  
Public Act 303 of 2005  
Sponsor: Rep. Rick Jones  
House Committee: Judiciary  
Senate Committee: Judiciary

### First Analysis 1-11-06)

**BRIEF SUMMARY:** The bill would exempt peace officers from provisions criminalizing the act of pointing and/or discharging a weapon without malice at another.

**FISCAL IMPACT:** The bill would have no significant fiscal impact.

### **THE APPARENT PROBLEM:**

Michigan law makes it a crime to point a firearm, or point and discharge a firearm, at another person, even if the act is done without malice. Penalties vary from a misdemeanor charge to a felony charge depending on whether the other person sustained injuries and the severity of those injuries. If the person died as a result of the injuries, the individual who discharged the weapon can be charged with manslaughter – a felony punishable by up to 15 years in prison and/or a fine of not more than \$7,500).

Some feel the law is problematic in that the provisions do not contain any exemptions or exclusions. For example, police officers routinely draw their weapons when approaching a potentially dangerous scene and typically point their guns at suspects until a situation is secured. It would appear, therefore, that a law enforcement officer would be in violation of the law and could face criminal charges even when following approved police procedures and protocol.

In April, 2005, a Michigan State Police trooper shot and killed a homeless man believed to be posing a threat outside of a Detroit bar. When it was determined that the homeless man was unarmed, the trooper was subsequently charged by a Wayne County prosecutor with second degree murder and also charged under one of the provisions discussed above – manslaughter: intentionally aiming a firearm at another without malice, resulting in death. The trooper was eventually acquitted of both charges by a jury, and an internal investigation conducted by the state police will ensue. However, the fact that an officer faced criminal charges for a routine act conducted in the performance of duty sent ripples of concern through the law enforcement community.

It has been suggested that the provisions prohibiting pointing and/or discharging a firearm at another person without malice be amended to exempt certain law enforcement officers when in the performance of their duties.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Penal Code (MCL 750.233 et al.) to clarify that provisions prohibiting intentionally aiming a firearm or discharging the firearm at another person, but without malice, does not apply to peace officers when done in the performance of their duties as peace officers. The bill would also define "peace officer" and make numerous editorial changes to update language. More specifically, the bill would:

- Specify that the various provisions do not apply to a state or local peace officer (including from other states) or federal peace officer while in the performance of duties as a peace officer.
- Place the penalty for aiming a firearm at another within the provision and increase the penalty to a maximum term of imprisonment of 93 days and/or a fine of not more than \$500. (Currently, it is an unspecified misdemeanor, meaning that the penalty carries a maximum term of imprisonment of 90 days and/or a fine of not more than \$500.)
- Allow the punishment for discharging a firearm – whether or not the other person sustained injuries – to include both a fine and imprisonment. Currently the punishment is either a fine or imprisonment.
- Define "peace officer" to mean that term as defined in Section 215 of the code. (Section 215 defines the term as a Michigan State Police trooper; county sheriff or deputy of this or another state; a municipal police officer of this or another state; a marshall of a city, village, or township; a constable; a conservation officer; a police officer or public safety officer of a college or university who is authorized by the institution's governing board to enforce state law and the rules and ordinances of the institution; a park and recreation officer or a state forest officer commissioned under Section 1606 and Section 83107, respectively, of the Natural Resources and Environmental Protection Act; a federal law officer; an investigator of the Department of Attorney General; a security officer employed by the State under Section 6c of Public Act 59 of 1935 (members of the State Police Capitol Post); or a motor carrier officer employed by the State under Section 6d of Public Act 59 of 1935 (uniformed enforcement members of the Michigan State Police Motor Carrier Division).
- Include a reference to the definition of "peace officer" as defined above in provisions that currently exempt peace officers from the prohibitions on intentionally discharging a firearm from a motor vehicle, snowmobile, or off-road vehicle in such a manner as to endanger the safety of another and intentionally discharging a firearm at a dwelling or occupied structure or in a facility that is an occupied structure in reckless disregard for the safety of others.

## ***ARGUMENTS:***

### ***For:***

Technically, under legislation adopted in the early 1930s, it is illegal for any individual to intentionally aim or discharge a firearm at another person, even when there is no malice involved. Until recently, these provisions have never been applied to law enforcement officers when in the performance of their duties. After all, officers routinely draw and aim their weapons at suspects and are trained to shoot when there is a threat to the public's safety or their own safety. Recently, however, a county prosecutor did charge a state trooper with manslaughter under one of the provisions for discharging his weapon and killing an unarmed homeless man. The bill now becomes necessary to clarify that these provisions in the penal code were never intended to apply to law enforcement officers for actions conducted in the performance of their duties.

The bill would not protect bad cops, nor would it create a shield that a dangerous, corrupt, or violent cop could hide behind. Law enforcement officers must adhere to the policies and protocol of the agency they serve. Each incident involving the discharge of an officer's weapon is investigated by the employing agency. An officer who engages in negligent conduct or who does not abide by departmental policies and procedures – whether on or off duty – may face internal disciplinary actions (which can include discharge), criminal charges under applicable state and federal laws, and civil actions brought by a victim or a victim's family. In short, the bill merely clarifies that an officer who otherwise was engaging in the lawful performance of duties as a peace officer would not be simultaneously breaking these 1931-era provisions of the penal code.

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