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House Bill 4861 (Substitute S-1 as reported by the Committee of the Whole)

Sponsor: Representative Richard Ball

House Committee: Judiciary

Senate Committee: Judiciary

CONTENT

The bill would amend the Michigan Penal Code to permit certain law enforcement officers to use a self-defense spray or foam device containing up to 10%, rather than 2%, oleoresin capsicum (OC); exempt peace officers, members of the military, and correctional employees from prohibitions against the use of a self-defense spray; and allow the manufacture, sale, or possession of a spray device containing up to 10%, rather than up to 2%, OC.

The Penal Code makes it a felony to manufacture, sell, or possess certain weapons, including a device designed to disable a person by the release of a gas. This does not apply to a self-defense spray device that is capable of carrying, and ejects, releases, or emits tear gas or a solution containing not more than 2% OC. The bill would include a foam as well as a spray device, and would permit a solution to contain up to 10% OC.

The Code makes it a misdemeanor to use a self-defense spray device that emits tear gas or OC at another person, or sell a self-defense spray device to a minor. The bill would include a foam device in those provisions. The Code permits the reasonable use of a self-defense spray device by a law enforcement officer in the performance of his or her duty. The bill, instead, would permit the reasonable use of a self-defense spray or foam device containing not more than 10% OC by a law enforcement employee in the performance of his or her duties, if he or she were authorized in writing to carry and use the device, and had been trained in its use, effects, and risks. The bill also would exempt peace officers, employees of the Department of Corrections, members of the military, certain individuals employed by a private vendor operating a youth correctional facility, State security employees providing security at State facilities in Lansing and at the State Secondary Complex, and State Police motor carrier officers from the prohibitions against the use of self-defense spray or foam.

MCL 750.224 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the offenses involving self-defense spray and foam. To the extent that allowing a higher concentration of OC in self-defense foam or spray and exempting certain authorized persons from restrictions on self-defense foam or spray would decrease convictions or incarceration time, local governments would incur reduced costs of incarceration in local facilities, which vary by county. To the extent that including self-defense foam in offenses that involve self-defense spray would increase convictions or incarceration time, local governments would incur increased costs of misdemeanor probation and incarceration in local facilities. The State would incur increased costs of felony probation at an average annual cost of \$2,000, as well as increased costs of incarceration in a State facility at an average annual cost of \$30,000 per individual.

Date Completed: 9-7-06

Fiscal Analyst: Lindsay Hollander