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BILL ANALYSIS

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House Bill 4861 (Substitute H-2 as passed by the House)
Sponsor: Representative Richard Ball
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-1-06

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% oleoresin capsicum, rather than the 2% limit currently in the Code; 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 10%, rather than up to 2%, oleoresin capsicum.

The Penal Code makes it a felony to manufacture, sell, or possess certain firearms, weapons, and bombs, including a device designed to disable a person by the release of a gas or other substance. The Code excludes from this provision a self-defense spray device that is capable of carrying, and ejects, releases, or emits one of the following:

- Not more than 35 grams of any combination of orthochlorobenzalmalonitrile (tear gas) and inert ingredients.
- A solution containing not more than 2% oleoresin capsicum (OC).

The bill would amend this provision to include a foam as well as a spray device, and would permit a solution to contain 10% OC.

The Code makes it a misdemeanor to use a self-defense spray device to emit tear gas or OC at another person (except as described below), or to sell a self-defense spray device to a minor; and requires a sentencing judge to consider a person's use of a self-defense spray device during the commission of a crime. The bill would include a foam as well as a spray 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% oleoresin capsicum by a person in the performance of his or her duties, if the person were employed by a county sheriff or a chief of police, were authorized in writing by that official to carry and use the device, and had been trained in its use, effects, and risks.

The Code also allows a person to use a self-defense spray device in the protection of a person or property under circumstances that would justify the use of physical force. Under the bill, this provision would apply to a spray or foam device containing not more than 2% OC.

The Code exempts peace officers of an authorized police agency, employees of the Department of Corrections, members of the military, and certain individuals employed by a private vendor operating a youth correctional facility, from restrictions on the use or possession of certain weapons, bombs, firearms, and devices. The bill also would exempt those individuals from the prohibitions against the use of self-defense spray or foam described above.

MCL 750.224 et al.

BACKGROUND

Oleoresin capsicum is derived from pepper plants of the genus *Capsicum*, and is commonly used in self-defense spray devices. The active ingredient in OC is capsaicin, the hottest of a family of chemicals known as capsaicinoids. Capsaicin is the actual chemical compound that produces the physiological effects of the spray or foam. The potency of devices containing the same concentration of OC reportedly can vary substantially depending on the quantity of capsaicin and other factors.

The heat of peppers and pepper sprays is measured in Scoville Heat Units, with pure capsaicin rated at 16 million units. Commercially available pepper sprays vary in their potency; on the internet, one spray supplier listed products with a range between 288,000 and 2 million Scoville units. By comparison, jalapeño peppers typically rate between 2,500 and 10,000 Scoville units.

Legislative Analyst: Curtis Walker

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 oleoresin capsicum 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.

Fiscal Analyst: Lindsay Hollander

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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.