

Legislative Analysis



ALLOW CPL HOLDERS, BOUNTY HUNTERS, AND RESERVE POLICE OFFICERS TO USE TASERS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4155 (Substitute H-1)

Sponsor: Rep. Rick Jones

House Bill 4156 (Substitute H-1)

Sponsor: Rep. Goeff Hansen

House Bill 4164

Sponsor: Rep. Kate Ebli

Committee: Tourism, Outdoor Recreation, and Natural Resources

Complete to 11-8-10

A SUMMARY OF HOUSE BILLS 4155-4156 & 4164 AS REPORTED FROM COMMITTEE 2-17-09

As reported from committee,¹ these bills would authorize reserve police officers, bounty hunters, and concealed pistol licensees to use portable electro-muscular disruption (EMD) devices (Tasers). In addition, a court officer, whether or not licensed to carry a concealed pistol, would be allowed to carry a concealed pistol or a Taser in places where those weapons would otherwise be prohibited.

House Bill 4156 (H-1) would amend the Penal Code to do the following things:

- Allow reserve peace officers and fugitive recovery representatives (bounty hunters) to possess and reasonably use a portable electro-muscular disruption (EMD) or Taser² while performing their official duties, if trained in the use, effects, and risks of the device.

¹ The bills were reported from committee on February 17, 2010, and referred to second reading before being re-referred to committee on April 28, 2010. The H-1 Substitutes for HBs 4155 and 4166 were not adopted on the House Floor.

² In Michigan, under MCL 750.224a, it is a felony to sell, offer to sell, or possess a "portable device or weapon from which an electrical current...may be directed, which current...is designed to incapacitate temporarily, injure, or kill," unless the device is a lawful electro-muscular disruption or EMD device. If the device is a lawful EMD device, a manufacturer, authorized importer, or authorized dealer may sell or transfer one to an authorized person, and a properly-trained authorized person may possess and reasonably use it while performing his or her official duties.

To be lawful, an EMD device must be capable of electro-muscular disruption, and it must be used or be intended for use as a defensive device capable of temporarily incapacitating or immobilizing a person by the direction or emission of conducted energy. It must also contain a tracking and identification system that, when first used, dispenses coded material that can identify the purchaser from manufacturer records. The device's manufacturer must have a policy of providing this information to police agencies upon written request.

- Allow a person with a valid concealed pistol license (CPL) to possess an EMD, if trained in the use, effects, and risks of the device.
- Require a person selling an EMD to a CPL holder to verify the purchaser's identify, and that the person had a valid CPL, and provide training to the purchaser at the time of the sale. (A violation of this section would be a misdemeanor punishable by up to 30 days' imprisonment, a fine of not more than \$500, or both.)
- Allow a CPL holder to use a Taser against another person to protect a person or property under circumstances that would justify the use of "physical force" (not "deadly force").
- Classify the unreasonable or unjustified use of an EMD device by a CPL holder as a misdemeanor punishable by up to two years in prison, a fine of up to \$2,000, or both.
- Require anyone who sold an EMD device to a CPL holder to provide training on the device's use, effects, and risks at the time of sale, and classify the failure to do this as a misdemeanor, punishable by up to 30 days' imprisonment, a fine of not more than \$500, or both.
- Allow a sentencing judge to consider the use or threatened use of an EMD device by a CPL holder during the commission of a crime as reason to enhance the person's sentence.
- Exempt launchable Taser projectiles (Taser cartridges for shotguns) from the identification and tracking systems required of other EMD devices used in Michigan, but allow only law enforcement agencies to use these Taser projectiles.

House Bill 4155 (H-1) would amend Public Act 372 of 1927 to make some, but not all, of the provisions that apply when a CPL holder carries a pistol also apply if he or she carries a Taser, and also add "court officers" to the list of persons who could carry pistols or Tasers in premises where this would otherwise be prohibited.

House Bill 4164 would amend the Code of Criminal Procedure (MCL 777.11b) to add the crime of carrying an EMD device (Taser) in a prohibited place, third or subsequent offense, to felony sentencing guidelines.

Each bill is tie-barred to the others, meaning that none will take effect unless all are enacted into law.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on state and local government. It is unknown how many police departments, police officers (reserve to full-time), bounty hunters, and CPL holders would purchase and use EMD devices, lawfully and unlawfully, in the state.

This summary uses the terms "EMD device" and "Taser" interchangeably, but does not use the term "stun gun" because many "stun guns" do not have the features needed to qualify as a lawful EMD device in Michigan, and are unlawful for anyone to possess or use here.

Further, the fiscal impact of the bills on state and local correctional systems would depend on how they affected numbers of convictions and severity of sentences. There are no data to indicate how many people might be convicted of the offenses described by the bills. To the extent that there was an increase in misdemeanor sentences, local units of government could incur additional costs of jail incarceration or misdemeanor probation supervision, both of which vary by jurisdiction.

To the extent that there was an increase in felony sentences, the state could incur increased costs of prison incarceration or felony probation supervision. The average appropriated cost of prison incarceration is roughly \$32,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Costs of parole and probation supervision average about \$2,000 per supervised offender per year. To the extent that more felons were sentenced to jail, counties could experience increased costs; jail costs vary by county.

Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

DETAILED SUMMARY

House Bill 4156

Bounty hunters. [§224a(2)(a)(viii)] Under the bill, an individual who has been issued a CPL and who has in his or her possession a written authorization from a licensed bail agent to serve as the agent's "fugitive recovery representative" (bounty hunter) for a specific defendant, could possess and reasonably use an EMD device, if trained in its use, effects and risks. The written authorization could not bear an expiration date beyond December 31 of the year it was signed, or the date the named defendant was apprehended, whichever came first.

CPL holders. [§224a(2)(a)(xii)] A holder of a valid CPL could possess and reasonably use an EMD device, if trained in its use, effects, and risks.

Training; verification. [§224a(5)] An authorized dealer or other person who sold an EMD device to a concealed pistol licensee would have to verify the purchaser's identity and verify that the purchaser had a valid CPL, and provide training, at the time of the sale, on the device's use, effects, and risks. A seller who did not do these things would commit a misdemeanor punishable by up to 30 days' imprisonment, a fine of not more than \$500, or both.

Use by CPL holders. [§224a(6)(A)] The bill would prohibit a CPL holder from using an EMD device against another person unless the use was reasonable for "the protection of person or property under circumstances which would justify the individual's use of physical force." The unreasonable or unjustified use of an EMD device by a CPL holder against another person would constitute a misdemeanor punishable by up to two years' imprisonment, a fine of not more than \$2,000, or both.

EMD device used to commit crime; enhanced sentence. [§224a(6)(B)] A sentencing judge could consider the use or threatened use of an EMD device by a concealed pistol licensee during the commission of a crime as reason to enhance the person's sentence.

Law enforcement use of non-traceable Taser projectiles. [§224a(7)(a)] Currently, EMD devices used in Michigan must include an identification and tracking system which dispenses coded tags traceable to the purchaser through manufacturer records, and the manufacturer must have a policy to provide such identification and tracking information to a police agency upon written request. The bill would eliminate these requirements for a "launchable device" used only by law enforcement agencies. [Although bill does not define "launchable device," we understand this term to refer to a Taser shotgun projectile, such as the XREP projectile developed by Taser International, which reportedly can be launched from a standard 12-gauge shotgun to incapacitate someone through electro-muscular disruption at a range of up to 65 feet.]

Reserve police officers. [§224a(7)(c)(vii)] Under current law, peace officers who have been trained in the use, effects, and risks of EMD devices may possess and reasonably use them while performing official duties. The definition of "peace officer" for this purpose includes state and local police officers and public safety officers, including motor carriers and state security personnel; sheriffs and their deputies; certain police officers and public safety officers of junior colleges, colleges, and universities; township constables; city, village, or township marshals; and conservation officers.³ The bill would add "reserve police officers"—volunteer or irregularly-employed peace officers—to the list of peace officers who may possess and reasonably use EMD devices in their work, if trained.

MCL 28.421(g) defines "reserve police officer," as follows:

"Reserve peace officer," "auxiliary officer," or "reserve officer" means, except as otherwise provided in this act, an individual authorized on a voluntary or irregular basis by a duly authorized police agency of this state or a political subdivision of this state to act as a law enforcement officer, who is responsible for the preservation of the peace, the prevention and detection of crime, and the enforcement of the general criminal laws of this state, and who is otherwise eligible to possess a firearm under this act.

House Bill 4155

Disclosure of EMD device possession when stopped by a peace officer. [§5f(2)] Under current law, a concealed pistol licensee who is carrying a concealed pistol must immediately disclose that fact when stopped by a peace officer. Under the bill, a concealed pistol licensee who is also carrying an EMD device on his or her person or in his or her vehicle would have to immediately disclose this fact to the peace officer.

³ The act currently refers to "a conservation officer of the department of natural resources or the department of environmental quality." As a technical matter, this should be amended to "a conservation officer of the department of natural resources and environment" to reflect the merger of those two departments.

Implied consent for chemical testing. [§5k(1)] Under current law, a person who accepts a concealed pistol license is deemed to have given implied consent to a chemical analysis. The implied consent provision and all other provisions found in Section 5k also apply to certain people who, by law, can carry a concealed pistol without a license. A list of these people, found in MCL 28.432a, has been recently expanded. Under the bill as drafted, people listed in Section 12a(1)(a) to (f)—but not those listed in subsections (g) to (k)—would be deemed to have consented to a chemical analysis.

[Note: The people listed in subsections (g) to (k) are apparently not currently subject to the implied consent provision when they carry a pistol and they would not be subject to the implied consent provision if they carried a Taser under the bill: Subsection (g) applies to members of the National Guard, reserves, or other military organization; subsection (h) applies to residents of other states who are licensed in their home state to carry a concealed pistol; subsection (i) applies to authorized agents of licensed firearms manufacturers who transport pistols as merchandise; subsection (j) applies to people who carry unloaded pistols in a wrapper or container in specified situations; and subsection (k) applies to Canadian peace officer and law enforcement officers.]

Carrying an EMD device under the influence or with a prohibited bodily alcohol content. [§5k(2), (4)] Currently, concealed pistol licensees—and people who are allowed to carry concealed pistols without a license under Section 12a(1)(a) to (f)—are prohibited from carrying a concealed pistol (1) while under the influence of alcohol or a controlled substance or (2) with a bodily alcohol content prohibited by Section 5k. The bill would extend these provisions to concealed pistol licensees allowed to carry EMD devices.

A peace officer who had probable cause to believe an individual was carrying a concealed pistol or an EMD device in violation of this section could require the individual to submit to a chemical analysis of his or her breath, blood, or urine.

Transportation of EMD devices in vehicles or vessels by CPL holder. [§5k(3)] A CPL holder who was transporting an EMD device in a vehicle or vessel would have to keep the EMD device stored as follows if he or she had bodily alcohol content:

- On a *vehicle*: the EMD device would have to be carried in a locked trunk, or in a locked compartment or container in a vehicle with no trunk.
- On a *vessel*: the EMD device would have to be carried in a locked compartment or container.

Prohibited premises; exempt individuals. [§5o] Under Section 5o(2) of the bill, a concealed pistol licensee who "also" carried an EMD device on his or her person or in his or her vehicle would be prohibited from carrying the device on any of the premises "described in subsection (1)," meaning the places where concealed pistols currently may not be carried under Section 5o(1), MCL 28.425o(1). Places where carrying a concealed pistols is currently prohibited include schools and school property (except when carried by a parent or guardian of a student while dropping off or picking up the student); day care centers; sports arenas and stadiums; certain licensed bars and taverns; places of

worship (unless the house of worship's officials specifically allow pistols); certain entertainment facilities; hospitals; and college and university dormitories and classrooms.

Exempt persons. [§5o(5)] Section 5o(5) contains a long list of law enforcement officers and others who, if they have a CPL, are allowed to carry concealed pistols in places where concealed pistols are otherwise banned. The bill would also allow these same people to carry EMD devices in places where concealed pistols are otherwise banned.

The H-1 Substitute would also add "court officers" to the list of persons who may carry a concealed pistol or Taser in otherwise prohibited places. Unlike any other category of persons on this list, court officers would not have to be licensed under the act to do this. The term "court officer" is not defined.

Penalties. The same penalties that currently apply to carrying a concealed pistol in a place where this is prohibited would apply to carrying a Taser in one of these places:

- A first violation is a civil infraction with a fine of up to \$500; the court must suspend the person's CPL for six months.
- A second violation is a misdemeanor punishable by a fine of up to \$1,000; the court must revoke the person's CPL.
- A third or subsequent violation is a felony punishable by not more than four years, a fine of not more than \$5,000, or both. The court must revoke the person's CPL.

House Bill 4164

House Bill 4164 would put carrying an EMD device (Taser) in a prohibited place, third or subsequent offense, in sentencing guidelines, making it a felony with a statutory maximum of four years (the same penalty that applies when a concealed pistol is carried in a prohibited place, third or subsequent offense).

Legislative Analyst: Shannan Kane
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.