

FELONY FIREARM PENALTIES

House Bill 4536 as introduced

Sponsor: Rep. Rick Johnson

House Bill 4543 (Substitute H-2)

Sponsor: Rep. Raymond Basham

First Analysis (5-13-99)

Committee: Constitutional Law and Ethics

THE APPARENT PROBLEM:

Many citizens view as unfair current laws which grant the entire authority for reviewing concealed weapons applications to county "gun boards." For example, not only must a person who applies for a license establish that he or she is qualified, he or she also has the burden of establishing that there is a special need for such a license. Also, it is maintained that, while some county gun boards have liberal policies and grant thousands of licenses each year, other boards are extremely restrictive in their policies and grant licenses only to elected officials or former police officers. In response, legislation has been introduced recently which would either provide a uniform statewide system for county gun boards (House Bills 4530, 4532-35, 4537-38, and 4545), or which would eliminate county gun boards (Senate Bill 460). The intent of the bills is to establish a uniform standard for granting licenses. However, many people maintain that, if such proposals are adopted, they should be "balanced" by legislation that would provide stricter penalties for various violations of the state's gun laws.

THE CONTENT OF THE BILLS:

House Bills 4536 and 4543 would amend the Michigan Penal Code to increase the penalties for various violations, and to add a new section to the code making it a felony to have an unregistered firearm. The bills are part of a package of legislation concerning concealed weapons. Some of the bills (House Bills 4530, 4532-35, 4537-38, and 4545) have been referred to the House Committee on Conservation and Outdoor Recreation. Both bills, if enacted, would take effect on September 30, 1999, and could not take effect unless House Bill 4530, the main bill in the concealed weapons law revision package, was also enacted.

House Bill 4536 would add a new section (MCL 750.568) that would prohibit a person from having, using, transporting, selling, buying, carrying, shipping, receiving, or distributing a firearm within Michigan that he or she knew (or had reason to know) was not registered as required by law or was not properly registered as required by law due to a material false statement by any person. The new section would not apply to a firearm that wasn't required to be registered by Michigan or federal law. Violations of the section would be felonies punishable by imprisonment for up to 4 years or a fine up to \$2,500, or both.

House Bill 4543 would amend the Michigan Penal Code (MCL 750.227 et al.) to increase the penalties for various violations involving guns. Currently, certain offenses in the code are misdemeanors, generally punishable by imprisonment for up to 90 days, a fine of up to either \$100 or \$500, or both. Generally, the bill would amend the code to change the maximum imprisonment to 93 days for a misdemeanor, and to make second and subsequent offenses felonies punishable by imprisonment for up to 4 years, a fine of up to \$2,500, or both. (Note: 93 days is the threshold for fingerprinting and entry into the Law Enforcement Information Network. For additional information, see *Background Information*.) The bill would amend the following sections:

Section 227. Currently, under the code, it is a felony to carry certain knives and other "dangerous weapons," and to carry a concealed pistol without a license. The felony is punishable by imprisonment for up to five years, a fine of up to \$2,500, or both. House Bill 4543 would amend the code to change the penalties for a violation concerning carrying a concealed pistol without a license, as follows: a first offense would be

a felony, punishable by imprisonment for up to ten years, a fine of up to \$5,000, or both; a second violation would be a felony, punishable by imprisonment for up to 15 years, a fine of up to \$5,000, or both; and a third or subsequent violation would be a felony, punishable by imprisonment for up to 20 years, a fine of up to \$10,000, or both. Under the bill, the penalties would be served consecutively with any other term of imprisonment imposed for any other violation arising from the same transaction

Section 233. The bill would make the following changes: The penal code has several misdemeanors involving intentionally but without malice aiming a firearm at someone. (1) Under section 233 of the penal code it is a misdemeanor with unspecified penalties to intentionally, but without malice, aim a firearm at someone. The bill would specify that the misdemeanor would be punishable by imprisonment for up to 93 days, a fine up to \$100, or both, and would make second and subsequent offenses felonies punishable by imprisonment for up to 4 years, a fine of up to \$2,500, or both. The bill also would add a new provision making it a 4-year felony for someone who was licensed to carry a concealed pistol to violate this section of the penal code while carrying a pistol, whether concealed or not, when committing the violation.

Section 234. Under section 234 of the penal code it is a misdemeanor, punishable by imprisonment in the county jail for up to one year, fine of \$500, or both, to discharge a firearm intentionally but without malice aimed at someone. The bill would make it a 4-year felony for second and subsequent violations, and add a 4-year felony for the same violation when committed by someone with a concealed pistol license while carrying a pistol.

It is a misdemeanor (punishable by imprisonment for up to 90 days, a fine of up to \$100, or both) under section 234d of the penal code to have a firearm on certain premises (including depository financial institutions, houses of religious worship, courts, theaters, sports arenas, day care centers, hospitals, and bars). The bill would raise the maximum imprisonment for the misdemeanor to 93 days, and add a 4-year felony for second and subsequent violations. In addition, the bill would expand the current reference to "court;" instead, the bill would refer to a "building or part of a building owned or leased by this state or a local unit of government of this state." The bill would also clarify that the exemption for a person licensed by Michigan or

another state to carry a concealed weapon is subject to the requirements of the firearms act.

Brandishing a firearm in public is a 90-day misdemeanor under section 234e of the penal code (section 234e). The bill would define "brandish" to mean "to exhibit or display in an aggressive or menacing manner," raise the misdemeanor imprisonment maximum to 93 days, and add 4-year felonies for second and subsequent violations and for violations by concealed pistol licensees carrying a pistol.

The penal code prohibits individuals younger than 18 from having firearms in public except under the direct supervision of someone 18 or older (section 234f). Violations are 90-day misdemeanors. The bill would change the 90 days to 93 days, and add a 4-year felony for second and subsequent violations.

Section 235. Under Section 235 of the penal code, it is a misdemeanor punishable by imprisonment in the county jail for up to one year, a fine of up to \$500, or both, to injure someone by discharging a firearm "intentionally but without malice" pointed at them. The bill would increase this penalty to two years and \$1,000. In addition, the bill would add 4-year felonies for second and subsequent violations and for violations by concealed pistol licensees carrying a pistol.

Section 237. Under section 237 of the penal code, anyone under the influence of "intoxicating liquor or any exhilarating or stupefying drug" who carries or has a firearm in his or her possession or control or who uses ("in any manner") or discharges a firearm is guilty of a misdemeanor with unspecified penalties. The bill would amend this section to add to the misdemeanor possession of a firearm (in addition to specifying "under the influence of intoxicating or an exhilarating or stupefying drug") "while having a bodily alcohol content of .08 or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine," and specify that the misdemeanor was punishable by up to 93 days' imprisonment, a fine up to \$100, or both. The bill also would add two new felonies for discharging a firearm while drunk or under the influence of drugs. One felony would be for simple discharge, and would carry a penalty of imprisonment for up to two years, a fine of up to \$2,500, or both. The second felony would apply to those with concealed pistol licenses, and would be punishable by up to four years in prison, a fine of up to \$2,500, or both. The bill also would define

"intoxicating liquor" (but not "exhilarating or stupefying drugs") by reference to the Michigan Liquor Control Code of 1998.

The bill would also increase the penalties for subsequent violations of possession of a weapon in a weapon-free school zone. Under the bill, a second violation would be a felony, punishable by imprisonment for up to 15 years, a fine of up to \$5,000, or both. A third or subsequent violation would be a felony punishable by imprisonment for up to 20 years, a fine of up to \$10,000, or both. The bill would also clarify that the exemption for a person licensed by Michigan or another state to carry a concealed weapon is subject to the requirements of the firearms act.

BACKGROUND INFORMATION:

In 1994, the legislature enacted laws to provide a penalty of up to 93 days' imprisonment for certain low level offenses. The enhanced penalties were adopted, in part, because the 93-day penalty would trigger statutory fingerprinting and criminal reporting requirements. When a person is arrested for an offense carrying a penalty exceeding 92 days, he or she is fingerprinted and the fingerprints are sent to the Criminal Records Division of the Department of State Police and the Federal Bureau of Investigation. As a result, a number of state law violations provide misdemeanor penalties of up to 93 days imprisonment, including larceny, embezzlement, receiving and concealing stolen property, and malicious destruction of property involving property worth less than \$200; domestic assault; first offenses of drunk driving and/or driving with a suspended license; and third degree retail fraud. These changes have allowed for better tracking of prior offenses when the offenders are prosecuted under state law. In addition, since local units of government often adopt ordinances based on state statutes, legislation has been proposed under House Bills 4580-85 to amend various local government enabling statutes to allow penalties of imprisonment for up to 93 days. The penalties would be incurred for a violation of an ordinance that substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the extent that the bills increased the numbers of offenders receiving criminal sanctions or increased offenders'

length of stay, they could increase state and local costs. To the extent that the bills increased collections of penal fines, they could increase fine revenues going to local libraries. (5-12-99)

ARGUMENTS:

For:

Legislation is pending in the House Conservation and Outdoor Recreation Committee that would make it easier to obtain a concealed weapon license in Michigan. However, there is some concern that this might be construed to mean that the state is relaxing its gun laws. In answer to this concern, the bills would provide increased penalties for certain crimes. In some cases, new penalties would be provided; in other cases, current penalties would be changed from misdemeanors to felonies, and increased penalties would be provided for second and subsequent offenses. Further, penalties would be increased for certain offenses if the violator was a concealed weapon licensee. This is seen as a particularly important precaution if the state is to allow more citizens to carry concealed weapons. In addition, under the provisions of House Bill 4536, it would be a felony to have a firearm if one knew that it wasn't registered. These provisions signify that the state intends to enforce tough gun laws.

Response:

Representatives of such organizations as Brass Roots and the Law Enforcement Alliance of America object to House Bill 4536's prohibition against having a firearm that is unregistered. The organizations maintain that neither state nor federal laws require that guns be registered: the firearms act specifies only that a gun must be licensed and that it must be presented to a local police department for a safety inspection (MCL 28.422 et al.), and federal firearms regulations require only that a gun be registered if it is purchased from a dealer.

Against:

As written, House Bill 4543 contains several inconsistencies. For example, in testimony before the House committee, the Michigan Coalition for Responsible Gun Owners pointed out that provisions of the bill which concern aiming or discharging a firearm without malice, or brandishing a firearm in public, would specify higher penalties for crimes committed by persons who are licensed to carry concealed weapons than for those who aren't licensed. (In each situation, the bill specifies that commission of these acts would be a misdemeanor if the violator is unlicensed, and a felony if the person is licensed).

According to the coalition, the same penalties should be applied to everyone. Otherwise, the provisions could be interpreted to mean that concealed weapon permittees are "not to be trusted."

In addition, the Law Enforcement Alliance of America points out that, while House Bill 4543 would provide severe penalties for a person who intentionally, but without malice, aims or discharges a firearm at another person, no exemption is provided for a person who does so in self defense.

Against:

The bill does not go far enough. The Law Enforcement Alliance of America points out that, while the act prohibits having a firearm on certain premises, such as a theater, sports arena, day care center, or hospital, or for possessing a weapon in a weapon-free school zone, certain exemptions to this prohibition are granted to persons such as peace officers, or those who are armed on the premises with the permission of the owner. The alliance maintains that sections 233 and 234 of the act, which provide penalties for persons who intentionally, but without malice, aim or discharge a firearm at another person, should similarly provide exemptions. In this case, the exemptions should be provided to persons involved in a sports activity such as hunting or target practice.

POSITIONS:

The Prosecuting Attorneys Association of Michigan (PAAM) has no position on the bills. (5-12-99)

The Michigan Coalition for Responsible Gun Owners has no position on the bills. (5-12-99)

The Michigan Partnership to Prevent Gun Violence has no position on the bills. However, it is the organization's viewpoint that increased penalties for gun violations do not lessen the negative impact of other legislation that would make it easier to obtain gun permits. (5-12-99)

The Michigan Sheriffs' Association has no position on the bills. The association maintains that gun licensing should remain a local issue. (5-12-99)

The Law Enforcement Alliance of America opposes House Bill 4536 and has no position on House 4543. (5-12-99)

The Michigan Catholic Conference (MCC) generally opposes legislation that would liberalize concealed weapon laws. (5-12-99)

Analyst: R. Young

■ 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.